



Public Disclosure Authorized

Public Disclosure Authorized

Public Disclosure Authorized

Public Disclosure Authorized

# Benchmarking Infrastructure Development

PPP Regulatory Landscape:  
Assessing Quality and Exploring Reforms

# Benchmarking Infrastructure Development

PPP Regulatory Landscape:  
Assessing Quality and Exploring Reforms

© 2024 International Bank for Reconstruction and Development  
The World Bank

1818 H Street NW  
Washington, DC 20433  
Telephone: 202-473-1000  
Internet: [www.worldbank.org](http://www.worldbank.org)

This work is a product of the staff of The World Bank with external contributions. The findings, interpretations, and conclusions expressed in this report are entirely those of the authors and should not be attributed in any manner to The World Bank Group, to its affiliated organizations, or to members of its Board of Executive Directors or the countries they represent.

The World Bank Group neither guarantees the accuracy of the data included in this publication nor accepts responsibility for any consequence of their use. The boundaries, colors, denominations, and other information shown on any map in this report do not imply on the part of The World Bank Group any judgment on the legal status of any territory or the endorsement or acceptance of such boundaries. For questions about this publication or information about ordering more copies, please e-mail: [benchmarkinginfrastructure@worldbank.org](mailto:benchmarkinginfrastructure@worldbank.org).

#### **Rights and Permissions**

The material in this work is subject to copyright. Because The World Bank Group encourages dissemination of its knowledge, this work may be reproduced, in whole or in part, for noncommercial purposes as long as full attribution to this work is given.

Any queries on rights and licenses, including subsidiary rights, should be addressed to World Bank Publications, The World Bank Group, 1818 H Street NW, Washington, DC 20433, USA; fax: +1-202-522-2625; e-mail: [pubrights@worldbank.org](mailto:pubrights@worldbank.org).





# Contents

Acknowledgments	6
Abbreviations	7
Key Messages	8
Overview	10

## 1

### **Building Ecosystems for Successful Infrastructure PPP Programs** **16**

Introduction	17
Beyond Regulations: Country Paths to Achieving PPP Program Success	18
PPP Regulatory Reforms and Infrastructure Investments	19

## 2

### **Measuring the Legal and Regulatory Quality to Prepare, Procure, and Manage PPPs** **24**

<b>Regulatory Frameworks and Institutional Arrangements for PPP Projects</b>	<b>25</b>
Regulatory Frameworks for PPPs	25
Institutional Arrangements for PPPs	28
<b>Preparation of PPPs</b>	<b>31</b>
Assessments of PPPs	35
Fiscal Treatment of PPPs	37
<b>Procurement of PPPs</b>	<b>40</b>
PPP Procurement Methods	46
Standstill Period	49
<b>Contract Management</b>	<b>51</b>
Contract Management System: Oversight Mechanisms	55
Mechanisms Addressing Changes to the Contract	57
<b>Unsolicited Proposals</b>	<b>61</b>
Regulatory Framework for USPs	64
Competitive Bidding and Minimum Time Limit	65
Incentive (Compensation) Mechanisms	67
<b>Disclosure of Information Throughout PPP Life Cycle</b>	<b>68</b>

# 3

## Understanding PPP Regulatory Reforms Through Country Case Studies

72

Ghana	75
Panama	77
Saudi Arabia	79
Ukraine	81

Conclusions	85
Economy Data Tables for PPP Scores	91
References	116
Endnotes	118



## Acknowledgments

Benchmarking Infrastructure Development (BID) is a product of the World Bank's Infrastructure Finance Practice Group. It was prepared by a team led by Fernanda Ruiz Nuñez and Mikel Tejada Ibañez. Guangzhe Chen, Imad Fakhoury, Sebastian Molineus, Fatouma Ibrahima Wane, Aijaz Ahmad, and Maria Vagliasindi provided overall guidance during the preparation of this report. The core team members included Iana Djekic, Isabela Franco Emerick Albergaria, and Maroi Kouka. Alejandro Sicra and Khasankhon Khamudkhanov provided data analysis. Mumba Ngulube, Fernanda Ruiz Nuñez, and Maria Vagliasindi produced the analytical background paper under this flagship report. Seong Ho Hong and Deblina Saha provided support with World Bank Private Participation in Infrastructure (PPI) data. Jyoti Bisbey assisted with the preparation of country case studies. The team would like to offer special thanks to the formal peer reviewers of this report: Mazen Alsad, Daron Bedrosyan, Henri Blass, Bekele Debele, Vivien Foster, Antoni Albert Nogues Comas, Victoria Hilda Rigby Delmon, Edgar Saravia, Stephane Straub, Tea Trumbic, and Namooos Zaheer. The Public-Private Infrastructure Advisory Facility (PPIAF) provided financial support for the report's PPP regulatory reform analysis.

The report was edited by Luba Vangelova and designed by a team from Base Three LLC, led by Marianne Siblini. Fernando Di Laudo was responsible for overseeing the report's knowledge management and outreach strategy, and Erin Scronce and Alia Nankoe managed the report's media and external outreach components.

Benchmarking Infrastructure Development would not have been possible without the generous contributions of a network of almost 1,200 local public-private partnership (PPP) legal experts, private sector operators, academics, government officials, and other professionals administering or advising on PPP procurement processes in the 140 economies surveyed. The names of those wishing to be acknowledged individually are listed at <http://bpp.worldbank.org>.

# Abbreviations

<b>ADB</b>	Asian Development Bank
<b>BID</b>	Benchmarking Infrastructure Development
<b>BAFO</b>	best and final offer
<b>BOT</b>	build-own-transfer
<b>EIA</b>	environmental impact assessment
<b>ESA</b>	European System of Accounts
<b>IPSAS</b>	International Public Sector Accounting Standards
<b>MoF</b>	Ministry of Finance
<b>PDF</b>	project development funds
<b>PPI</b>	Private Participation in Infrastructure
<b>PPP</b>	public-private partnership
<b>RFP</b>	request for proposals
<b>SIA</b>	social impact assessment
<b>USP</b>	unsolicited proposal
<b>VfM</b>	value for money

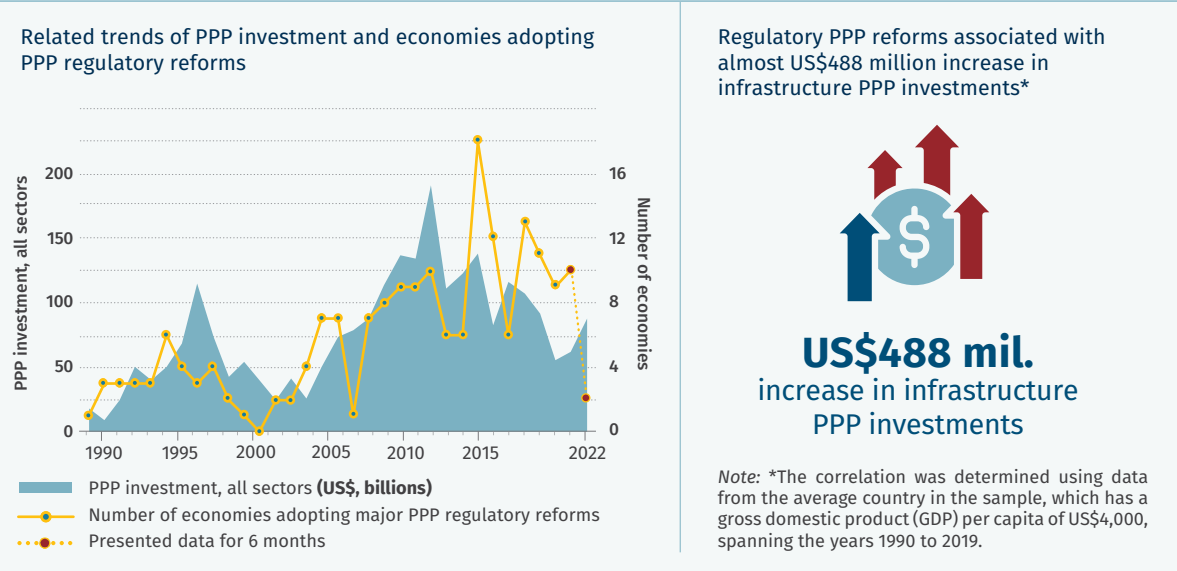
## Regions

<b>AFE</b>	Eastern and Southern Africa
<b>AFW</b>	Western and Central Africa
<b>EAP</b>	East Asia and Pacific
<b>ECA</b>	Europe and Central Asia
<b>LAC</b>	Latin America and the Caribbean
<b>MENA</b>	Middle East and North Africa
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>SAR</b>	South Asia

# Benchmarking Infrastructure Development: Key Messages

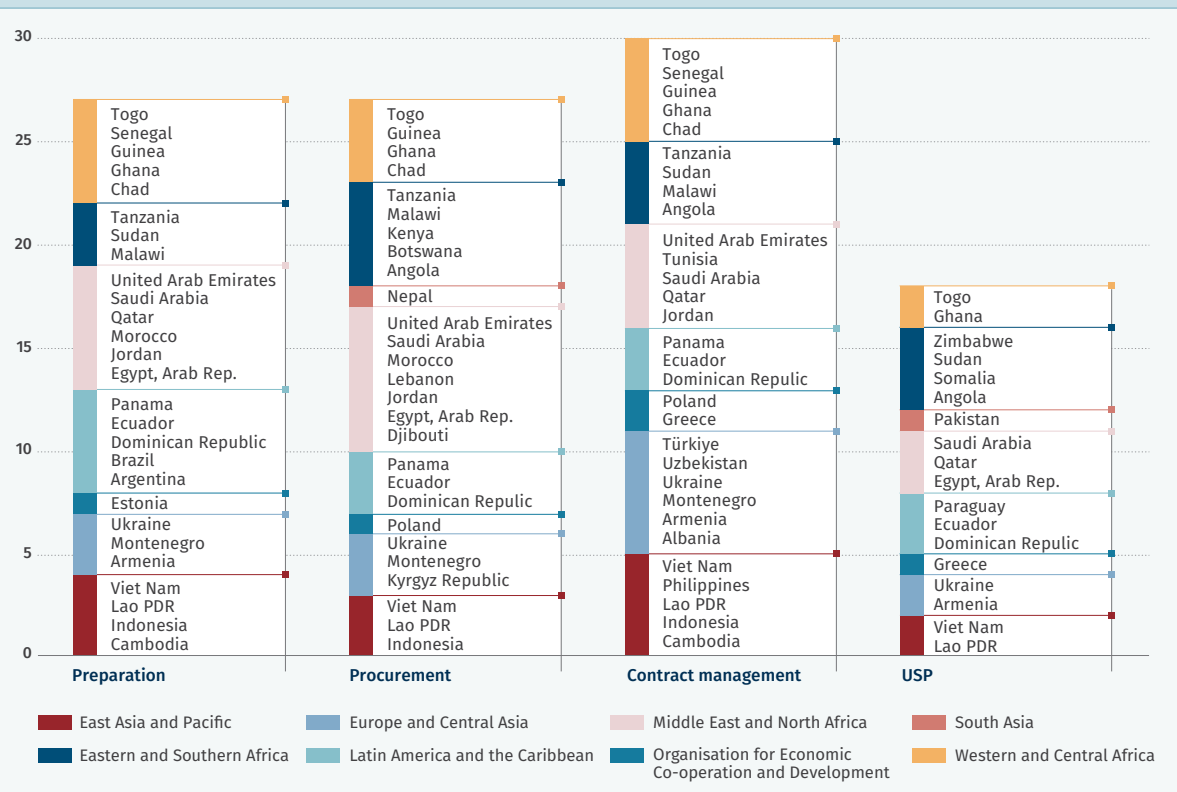
**1** New evidence developed for this study confirms the significant correlation between PPP regulatory reforms and PPP investments.

**Figure ES1: Number of Economies Adopting Major PPP Regulatory Reforms and Total PPP Investments (US\$, billions), 1990-2022**



**2** Countries have strengthened their PPP regulatory frameworks, with 45 economies passing reforms that impacted their BID scores between June 2019 and June 2022. Most of the changes have been seen in contract management practices and in the Middle East and North Africa (MENA) region.

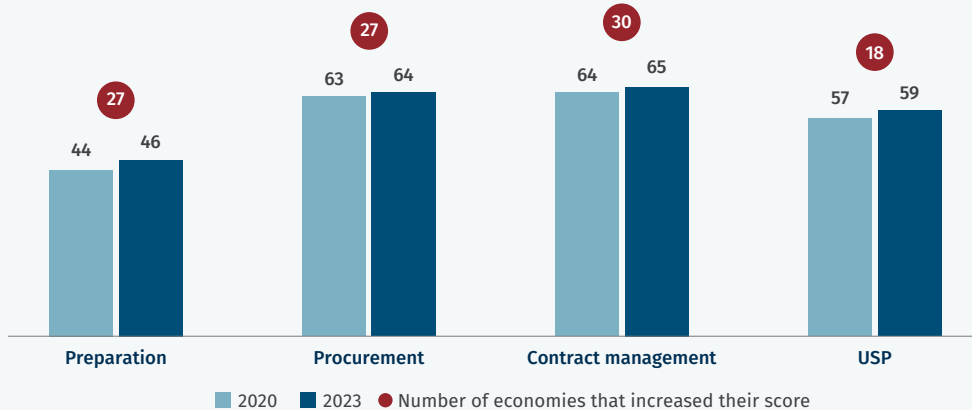
**Figure ES2: Number of Economies with PPP Regulatory Reforms Increasing BID Scores by Thematic Area and Region (June 1, 2019 - June 1, 2022, N=140).**



### 3

Global progress on PPP regulatory quality from these reforms has been modest, averaging two out of 100 score points. PPP preparation remains the thematic area with the most room for improvement, particularly for low-income and Western and Central Africa (AFW) economies.

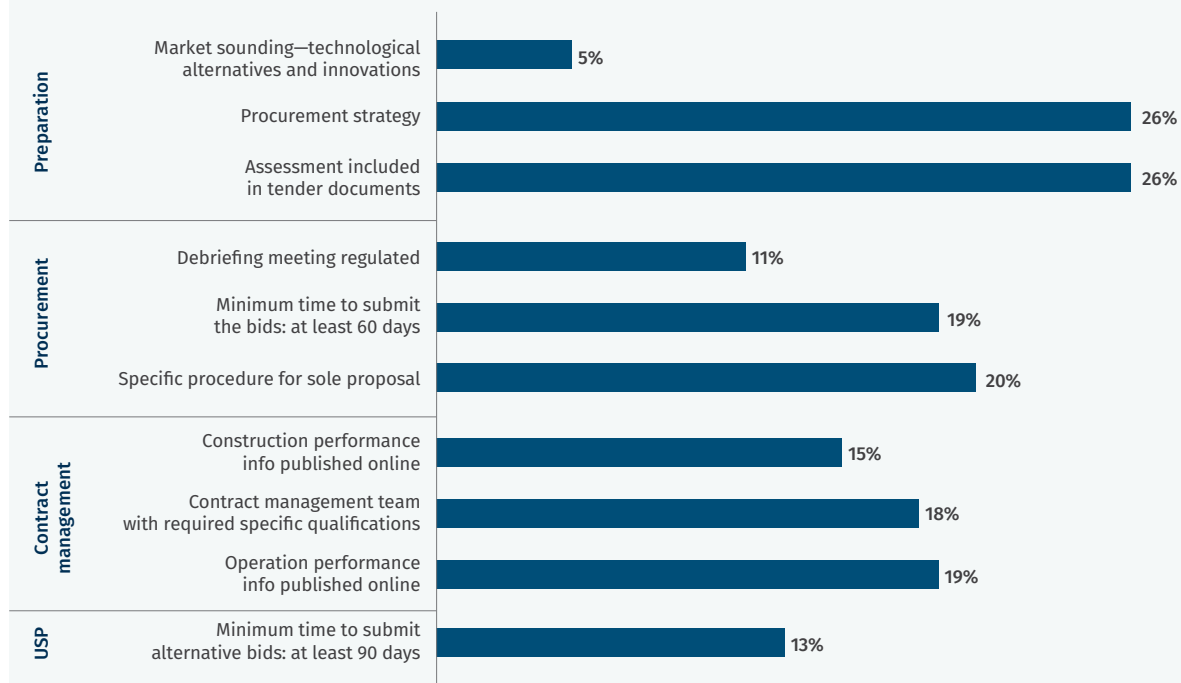
Figure ES3: Average PPP Score by Thematic Area in 2020 and 2023 (score 1-100, N=140)



### 4

Reforms tend to be concentrated in certain areas, leaving many relatively simple and useful reforms systematically left on the table across the world.

Figure ES4: Lowest Adoption of Good International Practices by Score Area (percent, N=140)



### 5

Even economies that have undergone significant reforms can further refine their regulatory frameworks. The project's website, <http://bpp.worldbank.org>, has all the details, with specific good international regulatory practices yet to be adopted by each of the 140 economies.



Source: Benchmarking Infrastructure Development 2023.

# Overview





- **Increasing efficiencies in delivering infrastructure services is at the core of addressing the infrastructure gap, and the private sector plays a crucial role.** Numerous countries have turned to private sector participation in infrastructure development to achieve these efficiencies and catalyze private capital investments. Although there are different modalities to procure infrastructure, many countries have extensively used public-private partnerships (PPPs) to deliver successful programs.
- **This report aims to provide a better understanding of the governance factors that contribute to successful PPP programs (Chapter 1); assess the quality of the PPP regulatory frameworks globally, and identify areas of improvement (Chapter 2); and provide greater insights into the complexity of the most recent regulatory reforms through country case studies (Chapter 3).**

## **Building Ecosystems for Successful Infrastructure PPP Programs (Chapter 1)**

- **To make the transition from a single project to a successful program, countries need a robust PPP ecosystem.** Strengthening the PPP ecosystem is an evolving journey. As evidenced by many countries, such as Colombia, Kenya, and the Philippines, this process requires numerous actions to be taken, including making regulatory and institutional reforms, developing mechanisms to reduce project risks, securing project preparation funding to create a pipeline of viable projects, and consistently adapting to changes in market conditions.
- **Regulatory quality is only one ingredient of the PPP ecosystem, yet empirical evidence suggests that it plays an important role in attracting PPP infrastructure investments.** PPP experts agree that good governance gives the private sector a more predictable, stable, and safe investment climate for PPP projects. The empirical literature, such as Hammami, Ruhashyankiko, and Yehoue (2006), Moszoro et al. (2015), and Kumar (2019), supports the hypothesis that higher governance quality is positively associated with increased levels of PPP investments. Using primary data collected as part of Benchmarking Infrastructure Development (BID) 2023 and the World Bank Private Participation in Infrastructure (PPI) database, this study fills a critical gap in knowledge and contributes to the World Bank Knowledge Compact and the Private Capital Enabling (PCE) agendas. This report provides fresh insights into the role of PPP-specific major regulatory reforms in unlocking PPP investments. It shows that there is a positive correlation between adopting a major PPP regulatory reform and PPP investments. Even though causality cannot be confirmed, the data suggest that when major PPP regulatory reforms are implemented, there tends to be an average increase in infrastructure PPP investments in transport, energy, water, and information and communication technology (ICT) of approximately US\$488 million, and US\$211 million when only the transport sector is considered, with the latter having a higher statistical significance two years after the reform. Those correlations are estimated for the average country with a mean gross domestic product (GDP) per capita of approximately US\$4,000 during 1990-2019.
- **Using the BID 2023 database, this report assesses the regulatory quality of preparing, procuring, and managing PPP infrastructure projects in 140 economies.** This initiative builds on the success of the 2020 edition and uses the same methodology, questionnaire, and geographical coverage. It aims to support evidence-based regulatory reforms to improve the environment that enables the development of high-quality PPP infrastructure projects. BID focuses on the different phases of the infrastructure project cycle, including preparation, procurement, and contract management. It also assesses the management of unsolicited proposals (USPs) and highlights the importance of disclosure of information for PPP projects. It only assesses regulations at the national/federal level, providing de jure indicators that are strictly regulatory based.



- **Primary data were collected under BID 2023, and the data are available online, along with economy profiles, customized queries, and additional methodological details.** BID 2023 presents the PPP regulatory landscape as of June 1, 2022, and provides actionable indicators to improve the PPP regulatory framework. The project’s revamped and interactive website can be found at <http://bpp.worldbank.org>.

## Measuring the Legal and Regulatory Quality to Prepare, Procure, and Manage PPPs (Chapter 2)

---

- **Countries have significantly strengthened their PPP regulatory frameworks, with 60 economies passing reforms between June 2019 and June 2022. Most changes have been seen in the Middle East and North Africa (MENA) region.** A total of 45 out of the 140 economies (32 percent) introduced regulatory changes that impacted their scores. Eight economies—namely Armenia, the Dominican Republic, Ghana, Montenegro, Panama, Qatar, Saudi Arabia, and Sudan—introduced their first PPP laws. Seven economies (Burkina Faso, Jordan, Kenya, the Kyrgyz Republic, Malawi, Senegal, and Togo) have restructured their legal frameworks by adopting new PPP-specific laws, repealing and replacing previous stand-alone PPP laws.
- **Since 2020, scores have increased in all four thematic areas, most notably contract management.** Though some countries have embarked on reforms that have increased their scores significantly, the improvement in global scores was minimal. The thematic areas of preparation and USP increased their global scores by two points, while procurement and contract management only increased by one. Contract management stands out as the area for which the largest number of economies (30) have passed reforms that increased their score.



- **Establishing PPP units remains a common feature of the institutional framework for PPPs, with 87 percent of the economies having a dedicated PPP unit, yet the roles they assume vary significantly. The Dominican Republic, Panama, and Qatar have recently established their first PPP units.** In only 7 percent of the surveyed economies do the PPP units assume the role of procuring authorities for PPPs. In comparison, 80 percent of the PPP units have an advisory role to the PPP procuring authorities, usually line ministries. Among those PPP units with advisory roles, however, 42 percent retain the capacity to approve PPP projects, usually by actively participating in the preparation and approval of the PPP feasibility studies. Of the three new PPP units, only Qatar has vested its PPP unit with approval authority.
- **Globally, 35 of the 140 surveyed economies have laws for creating project development funds (PDFs). Cambodia, Greece, Jordan, Morocco, Senegal, and Tunisia recently passed reforms establishing PDFs. It is worth noting that although there is a trend to create PDFs, most of them are not operational yet.** Indonesia's PDF, initially established in 2006, has gone through several reforms, but, as of mid-2022, the PDF supported roughly half of the PPP projects that had successfully reached financial closure in the economy, and it has 20 projects in the pipeline.
- **PPP preparation is the thematic area with more room for improvement, particularly for low-income and Western and Central Africa (AFW) economies. Market sounding for technology and innovations is only required by 5 percent of the economies, showing a mere 1 percent increase since BID 2020.** Despite being the thematic area with the lowest score, only a slight improvement has been observed since June 2019. Moreover, adopted reforms usually focus on already widely established good practices, so there is room for improvement. Financial viability or bankability, adopted by 77 percent of the economies, shows the most significant increase (6 percent) since BID 2020.
- **A robust public fiscal management system helps mitigate potential financial sustainability challenges that a distressed or canceled PPP could create. Yet only 19 economies have adopted specific provisions for all three of the following elements—budgeting, reporting, and accounting—and only 18 economies disclose PPP liabilities in a publicly accessible online platform or database.** Armenia and Montenegro now require approval from the budgetary authority before signing a PPP contract; Ghana and Ukraine have introduced specific provisions regulating PPPs' budgeting, reporting, and accounting treatment. Armenia and Ukraine implemented new regulations requiring data on PPP liability to be made accessible online. Approval by the budgetary authority before initiating the PPP procurement procedure (68 percent) and before signing the contract (38 percent) are considered international good practices. Currently, 44 economies require both.
- **A successful PPP project depends heavily on choosing the right private sector partner. However, some more advanced procurement practices are still uncommon. Only 11 percent of the surveyed economies include the possibility of holding a debriefing meeting in their legislation, and a mere 19 percent meet the requirement of allowing at least 60 calendar days for the bidders to prepare and submit their bids, which could allow adequate time for all bidders to prepare their proposals. Other good international procurement practices also remained rarely adopted: Online publication of contract amendments was only carried out in 22 percent of cases, and requiring a specific procedure when only one bid is received was reported in only 20 percent of cases.** Some economies have adopted new practices. Botswana, Brazil, Ghana, Senegal, Sudan, Ukraine, and Viet Nam have introduced competitive dialogue as one potential procurement method, with one of the most significant increases related to procurement. The Lao People's Democratic Republic (Lao PDR), Qatar, Togo, and Viet Nam introduced norms that

mandate that the pre-qualification requirements be regulated to ensure competition—a good step towards a more open procurement process. MENA is the leading region in reforms regarding regulating the standstill period, with three economies (Djibouti, Lebanon, and Saudi Arabia) introducing standstill period requirements as part of complaints review mechanisms.

- **A sound PPP contract management system is crucial to determining whether the project delivers the expected value for money (VfM). Despite slight progress, disclosing contract management information to the public is still low, with 15 percent of the economies disclosing project construction and 19 percent operational performance information.** More than 80 percent of the surveyed economies adopt more than half of good contract management practices, with 30 economies increasing their scores. Nine economies have seen considerable improvements of more than 12 points in their contract management scores: Armenia, the Dominican Republic, Ecuador, Ghana, Lao PDR, Montenegro, Panama, Saudi Arabia, and Togo. Although much work remains to be done, this illustrates a growing understanding of the importance of robust contract management systems. Additionally, the data show that the number of economies adopting new requirements for third-party approval of PPP contract modification continues to grow (a 5 percent increase). This favors better due diligence and prevents opportunistic behavior in renegotiation processes. The other most significant improvement (an increase of 5 percent) is seen in economies that have undergone reforms, further regulating changes in PPP ownership.
- **Monitoring and evaluation mechanisms to track construction works and subsequently oversee the implementation of the PPP contract after construction ensures the private party meets its contractual obligations. Only 37 percent of the economies require payments linked to performance.** BID 2023 captures progress in Angola, Panama, Senegal, and Ukraine, which have introduced new regulations and laws linking payment to performance.
- **The renegotiation of PPP contracts is regulated to avoid opportunistic behaviors. Renegotiation is expressly regulated by most surveyed economies (90 percent). However, the critical PPP issue of changes in risk allocation is explicitly addressed in only 19 percent of the economies (a 2 percent increase since BID 2020).** Seven economies have updated their legal frameworks since 2020 to include third-party agencies' renegotiation approval: Armenia, the Dominican Republic, Guinea, Montenegro, Saudi Arabia, Togo, and Uzbekistan; this is a critical feature to provide more impartial oversight.
- **Proper regulation of unsolicited proposals (USPs) is required to ensure they are pursued transparently and for the right reasons, such as innovation. Although progress was shown in adopting good practices for USPs, only 13 percent of the economies have a minimum period of at least 90 days during which the prospective bidders may prepare their proposals.** Nine economies,<sup>1</sup> introduced formal regulatory frameworks for USPs after June 2019. Ninety-two economies (66 percent), mainly in the Eastern and Southern Africa (AFE) region, expressly regulate USPs. Croatia, Lebanon, India, and recently Albania explicitly prohibit USPs. Armenia, Greece, Lao PDR, Somalia, Pakistan, and Viet Nam are the six economies that have enacted regulations explicitly addressing the need for a competitive procurement procedure. Moreover, for USP-originated projects, Greece has established a minimum timeframe within which bids must be submitted that is longer than for government-originated proposals (100 days instead of 30 days), which is considered an international good practice.



## Understanding PPP Regulatory Reforms Through Country Case Studies (Chapter 3)

---

- **Since June 2019, the governments of Ghana, Panama, and Saudi Arabia have introduced their first PPP laws, and Ukraine has amended its existing PPP regulatory framework.** These four case studies illustrate that economies can take diverse paths in achieving their PPP reforms. Ghana's new PPP act introduces significant reforms, especially in improving contract management. The reform process was deliberate and required engagement with critical stakeholders. Panama established its first PPP law after discussions spanning more than a decade, aligning with a greater number of international good practices in all major areas of the procurement process. Saudi Arabia's new PPP framework enhances the competitiveness of the procurement process and reinforces contract management. This reform required preliminary discussions regarding how the PPP law would address general contract-related issues, an important lesson for economies without civil law. Ukraine has amended the PPP Law and introduced a new Concession Law, despite a change in government during legislation implementation, illustrating the importance of the government's commitment to following through on legislative plans to enact reform. Each country's journey reflects its unique context and the need for a tailored approach to PPP regulation that aligns with its institutional organization, national development objectives, and the broader investment climate.
- **The landscape of PPP regulation is continually evolving. Improving the PPP legal framework tailored to a specific country's market conditions is an iterative process, and many countries still have room to implement additional legal and institutional reforms to develop complex PPPs effectively.** Even economies that have undergone significant reforms continue to refine their regulatory frameworks to provide greater clarity as they gain insights from PPP project development. For specific recommendations of good international practices yet to be adopted by each of the 140 countries, visit the project's website: <http://bpp.worldbank.org>.



1

# Building Ecosystems for Successful Infrastructure PPP Programs

## Introduction

Despite its intrinsic relevance and policy makers' efforts to address the infrastructure gap, progress has been limited. A confluence of challenges—from macroeconomic shocks and political instability to weak institutional capacity—has hindered the capacity of countries to develop infrastructure that meets demand. Increasing efficiencies in delivering infrastructure services is at the core of addressing the gap (Foster and Briceño-Garmendia 2010; Rozenberg and Fay 2019). Numerous countries have turned to private sector participation in infrastructure development to achieve these efficiencies and catalyze private capital investments. Although there are different modalities to procure infrastructure, public-private partnerships (PPPs)<sup>2</sup> have been extensively used by many countries to deliver successful programs.

Infrastructure PPPs are advantageous because they integrate infrastructure projects' design, construction, financing, and maintenance, ensuring long-term efficiency and quality. By bundling these phases into a single contract, PPPs align the incentives of private partners with public goals, fostering a life-cycle approach to project management. This integrated structure encourages innovative solutions and cost-effective practices during the construction phase, and guarantees ongoing maintenance, which helps preserve the infrastructure's functionality and value over time. Consequently, PPPs can deliver superior infrastructure performance, reduce the risk of deferred maintenance, and provide better service to the public.

This report examines one of the key elements of an overall sound PPP ecosystem, the crucial role that the quality of PPP regulatory frameworks<sup>3</sup> plays in fostering a conducive ecosystem for successful PPP programs—while acknowledging that it is just one of several critical factors. This report incorporates new empirical analysis from primary data collected through Benchmarking Infrastructure Development 2023 (BID 2023). It also uses country case studies to illustrate and draw lessons from how countries have created robust PPP ecosystems and strengthened PPP regulatory frameworks over time. This report is aligned with the Knowledge Compact Agenda's focus on evidence-based decision-making by providing evidence-based knowledge that can inform development strategies and PPP operations. Additionally, it focuses on fostering the PPP ecosystem that is conducive to private sector investment, thereby contributing to the Private Capital Enabling (PCE) objectives that will ultimately support Private Capital Mobilization (PCM), two critical corporate objectives of the World Bank Group to help to close the infrastructure gap.

The BID 2023 database was collected as a World Bank PPP group initiative to assess the regulatory quality of preparation, procurement, and management of PPP infrastructure projects. Building on the foundations of previous editions, which started in 2015, it covers 140 economies with different legal, regulatory, and institutional systems. BID 2023 collects primary data through a survey distributed to more than 10,000 contributors. The questionnaire only includes de jure questions, so the actionable indicators are strictly regulatory based and do not capture the actual implementation of the legal requirements. The survey uses case study assumptions (a national highway transport project procured by a federal authority) to ensure cross-country comparability and aggregability, and it only assesses national-level regulations. It is important to highlight that this is the first BID edition to use the exact same questionnaire and the same geographical coverage as the previous BID 2020 edition. As a result, reforms implemented between June 2019 and June 2022 can be analyzed without the need for data adjustment. Additionally, no changes in the methodology have been made. Details<sup>4</sup> about the BID initiative are publicly available on the project's website (<https://bpp.worldbank.org>). Exploiting the wealth of information provided by this strategic data collection effort, this report covers the following topics:

- Chapter 1 shows that there are many determinants of PPP infrastructure investments, yet PPP regulatory quality is a crucial ingredient to building a supportive environment for successful PPPs. Different countries take very diverse paths to developing the PPP market. Based on the existing and novel empirical analysis that builds upon information collected as part of BID 2023, this section also explores the relationship of major regulatory reforms with PPP infrastructure investments.
- Chapter 2 relies extensively on BID 2023 data and describes the quality of PPP regulatory frameworks, highlighting major trends and reforms, and pinpointing areas where the adoption of international best practices could be improved.
- Chapter 3 presents four country case studies. These cases, selected from countries where BID 2023 detected major regulatory reforms, are intended to share experiences and lessons learned by showcasing positive regulatory changes and illustrating the complexity of the journey toward achieving strong PPP regulatory frameworks.
- Lastly, in the final section, the report presents conclusions and next steps.

## **Beyond Regulations: Country Paths to Achieving PPP Program Success**

PPPs are complex and require the right and conducive ecosystem to succeed. Moreover, evolving from one successful PPP project to a sustainable program requires multiple factors to be in place. This ecosystem includes several critical components, such as macroeconomic and political stability; sound policy and regulatory frameworks; political commitment; mature financial markets; institutional capacity, such as well-staffed PPP units and clear definition of roles and responsibilities, particularly for the PPP unit, the Ministry of Finance (MoF) and the procuring entities; strong infrastructure governance; effective risk allocation; stakeholder engagement; effective performance monitoring; a transparent process; and a long-term vision. Moreover, each sector has its own set of challenges that must be addressed in parallel, such as robust sectoral regulatory frameworks, market competition, tariff adjustment, project sizing to attract private investments, etc. Support from development finance institutions (DFIs) from upstream to downstream has proven to be a critical element as well.

The cases of Colombia Kenya and the Philippines<sup>5</sup> illustrate how countries have undertaken significant reforms to nurture a sound ecosystem for successful PPP programs. These are just some of many experiences worth exploring that complement other very well-known examples, such as Australia, Brazil, Chile, and South Africa. It is abundantly clear from all these experiences that each country is unique in its evolution of the PPP program, and there is no one-size-fits-all solution to establishing a PPP program. Kenya and the Philippines exemplify countries that started with PPPs in energy generation. This has been the case in many countries that started with small renewable energy projects and built on the experience to evolve into larger, more complex projects. Colombia was one of the few countries that was able to develop PPPs in the transport sector from a very early stage. Colombia has developed a comprehensive PPP program through reforms that involve adapting regulations and institutions to overcome limitations and using DFI support to enable commercial financing. Kenya's journey started with various sectoral reforms supported by DFIs. Those sectoral reforms were accompanied by PPP legislation and policies, and the use of risk mitigation financial



tools aimed at unlocking private sector participation. Though Kenya managed to have PPPs in several sectors, most of the success of its PPP program focuses on energy generation projects, with a growing emphasis on renewables. The evolution of the PPPs in the Philippines reflects a journey of policy and regulatory reforms from a build-own-transfer (BOT) law to the PPP Act, institutional strengthening of the PPP Center, and the creation of funds to ensure a continuous pipeline of projects and to reduce project risks. The shift to a programmatic approach has supplied the market with a continuous pipeline of PPP projects, enhancing the local financial and private sector development.

By nurturing an ecosystem, governments can foster an enabling environment conducive to the transition from individual PPP projects to sustainable programs. However, as evidenced by Colombia, Kenya, and the Philippines, successful PPP implementation requires more than just regulatory frameworks; it demands continuous adaptation to market dynamics. In fact, aligned with this anecdotal but well-documented evidence, the empirical literature on the determinants of PPP investments also underscores how numerous factors significantly correlate with PPP investments, with PPP regulatory quality being one of them. The following section will delve into this analysis, based on existing and novel empirical work, to further advance our understanding of these determinants.

## **PPP Regulatory Reforms and Infrastructure Investments**

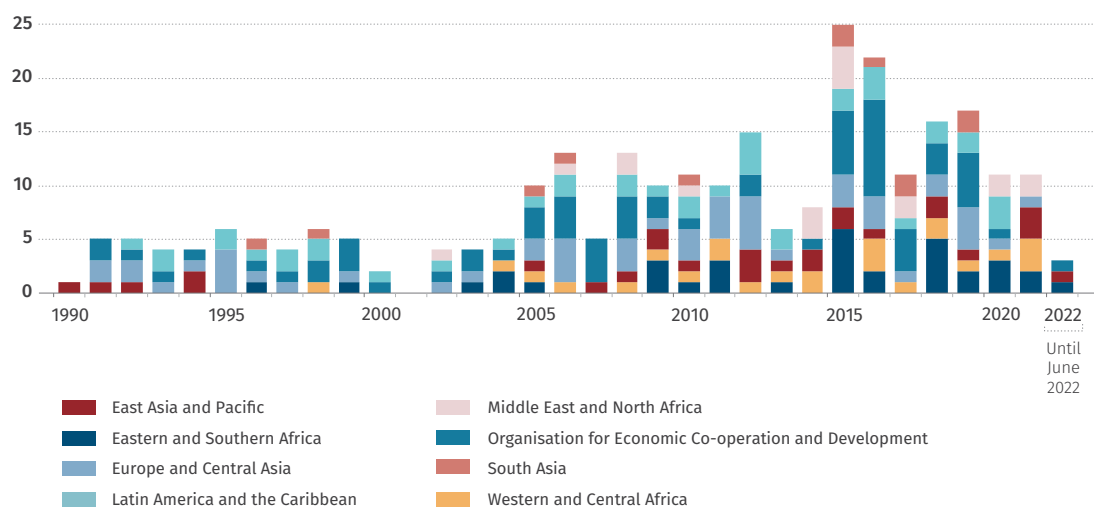
The empirical literature on the determinants of PPP investment shows that a country's macroeconomic, institutional, regulatory, and market conditions are associated with the PPP market's growth. In fact, given the high costs and risks investors face, numerous criteria must be met, particularly in emerging markets and developing economies (EMDEs), where economic and financial conditions are often more tenuous. Most of the literature uses the World Bank Private Participation in Infrastructure (PPI) Database to analyze the determinants of PPP investments and control for the macroeconomic environment, such as inflation, exchange rate, government debt, macro crisis, and market size (population, gross domestic product (GDP), etc.).



Various studies have explored the impact of the institutional and regulatory environment on PPPs and PPI. Hammami, Ruhashyankiko, and Yehoue (2006) found that a reduction in corruption and a stricter rule of law correlate with an increase in PPP projects. Banerjee, Oetzel and Ranganathan (2006) observed that robust property rights and bureaucratic quality are conducive to attracting more PPI, while also noting a paradoxical increase in PPI with higher corruption levels. Araya, Schwartz and Andres (2013) identified a negative relationship between a country's sovereign risk and PPI investment in infrastructure. Moszoro et al. (2015) demonstrated a positive link between PPI investment in infrastructure and several factors: freedom from corruption, the effective rule of law, and regulatory quality, and a negative link with the frequency of sectoral disputes. Yang et al. (2019), restricting the sample to the Belt and Road countries, concluded that large PPP investments are more sensitive to the governance quality of the host country compared to smaller PPP projects. Kumar (2019) provided evidence that a higher Global Governance Index score is positively associated with the number of PPP projects. Lastly, Foster and Ngulube (2024), using the governance index as an explanatory variable, concluded that a unit increase in the governance index is associated with an increase in the expected normalized PPI investment amount by 16 percent.

To understand the evolution of major PPP regulatory reforms since 1990, a new discrete variable that counts major reforms over time since 1990 at the country level (hereafter referred to as "reform variable") was generated. A major regulatory reform is defined as positive changes that significantly alter the PPP regulatory framework. Consequently, regulatory development (e.g., via executive decrees) or amendment to the existing framework does not constitute a major reform. On the other hand, the adoption of a PPP law where only public procurement rules used to exist, the regulation of a new type of PPP, or the introduction of a tendering process would be instances of major reforms. Figure 1 below illustrates the number of economies adopting major PPP regulatory reforms over time.

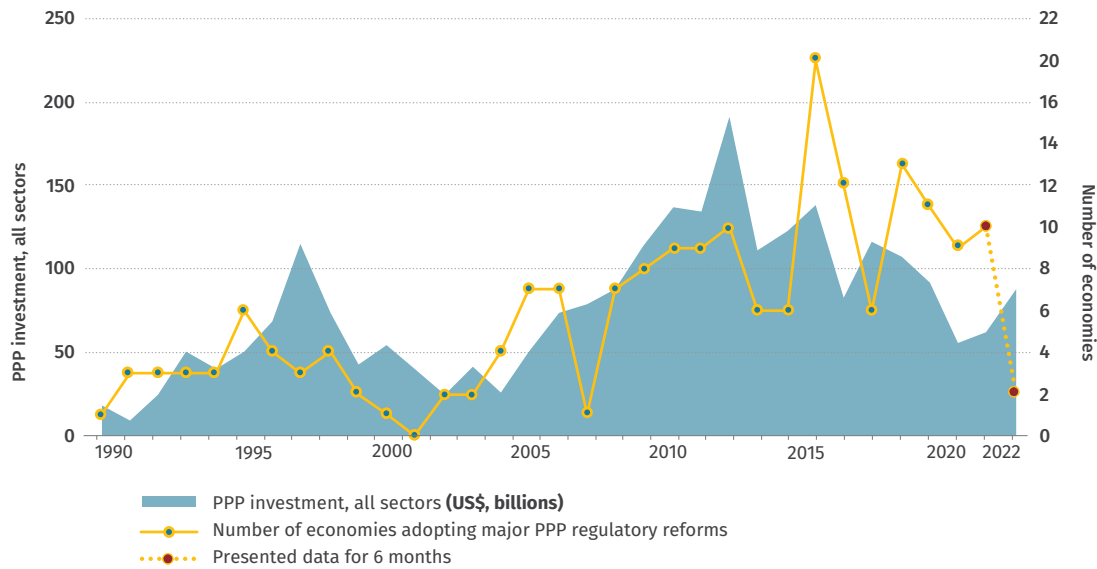
**Figure 1: Number of Economies Adopting Major PPP Regulatory Reforms, 1990-2022, by Region**



Sources: Original figure based on the World Bank BID database and independent research.

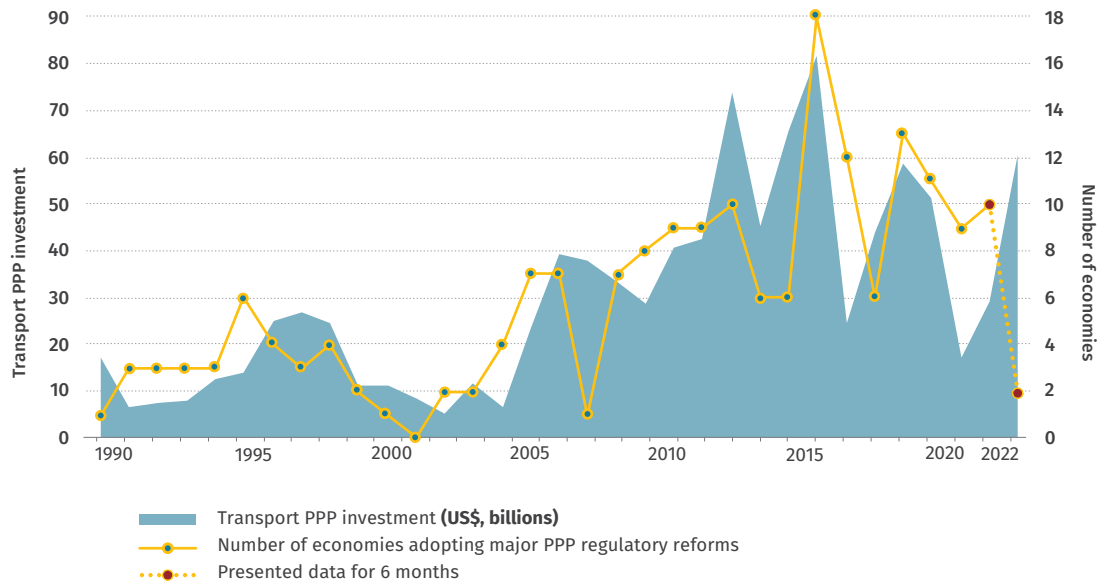
Figure 2 and Figure 3 present the number of economies implementing major PPP regulatory reforms and the monetary value of PPP investments in all sectors,<sup>6</sup> and transport-specific PPP investments, respectively.

**Figure 2: Number of Economies Adopting Major PPP Regulatory Reforms and Total PPP Investments (US\$, billions), 1990-2022**



Sources: World Bank PPI database, BID database, and independent research. The sample covers the 99 economies in both the World Bank PPI and BID 2023 databases. Note: The term all sectors refers to the digital, energy, transport, and water sectors.

**Figure 3: Number of Economies Adopting Major PPP Regulatory Reforms and Transport PPP Investments (US\$, billions), 1990-2022**



Sources: World Bank Private Participation in Infrastructure (PPI) database, BID database, and independent research. The sample covers the 99 economies in both the World Bank PPI and BID 2023 databases.

As shown in Figure 2 and Figure 3 above, the variables have similar trends. These figures show that the variables move similarly over time with a certain lag, but there are no statistically significant correlations. Figure 3 shows that transport sector PPP investments seem to be moving closer to the PPP regulatory reforms. This is expected because the database collected under BID uses a highway transport project in its questionnaire as a guiding example to ensure comparability across countries. This means that some sector-specific reforms other than transport may not necessarily be captured in the BID database. This is usually the case for energy that, for several countries, is regulated outside the PPP regulations.

The figures above confirm that many factors affect PPP investments beyond regulatory quality. As shown in the cases of Colombia, Kenya, and the Philippines, countries introduce regulatory reforms to establish a solid legal framework that reduces the costs and risks of developing projects, and that framework provides the private sector with a more predictable, stable, and safe environment to invest in PPP infrastructure projects. Although this is only one ingredient of the many necessary to develop a successful PPP program, countries have, over time, tried to improve their regulations by introducing reforms to bring more clarity and address possible legal vacuums. This is a long process, and, as illustrated in the case studies, most countries have to go through major reforms and amendments until their frameworks are well established; even then, further adjustments are required over time.

A more rigorous empirical analysis is required to isolate the effect of PPP regulatory frameworks from other factors. The current body of research primarily utilizes broad measures of governance without exploring the importance of the specific regulatory frameworks that govern PPPs. A background paper by Ngulube, Ruiz-Nuñez, and Vagliasindi (2024) produced under this flagship report, assesses how positive major reforms in the PPP regulatory frameworks correlate with PPP investments while controlling for a broad set of other factors.<sup>7</sup> The sample includes 99 developing countries from 1990 to 2019. It uses the World Bank PPI database to measure PPP investments in all infrastructure sectors—energy, transport, information and communication technology (ICT), and water—and PPP investments in the transport sector only. The PPI database captures investment commitments at financial closure.

Using a zero-inflated negative binomial (ZINB) model to control for the high frequency of zero values in the dependent variable PPP investments, the 2024 empirical analysis by Ngulube, Ruiz-Nuñez, and Vagliasindi shows that major PPP regulatory reforms are associated with an increase in PPP investments. It also uses a lagged reform variable to test the correlation of one-, two-, and three-year delays between the major reforms and the change in investment values.

Although causality cannot be conclusively established, major regulatory reforms coincide with increased investment in infrastructure PPPs. The estimates indicate that, on average, a major PPP regulatory reform is associated with a marginal increase<sup>8</sup> in the PPP investment across infrastructure sectors of US\$488 million, US\$424 million, and US\$446 million, when zero, one, and two lags of the reform variable are used, respectively. Specifically, the data suggest that when major PPP regulatory reforms are implemented, there tends to be an average increase in PPP investments of approximately US\$488 million.<sup>9</sup>

When transport PPP investments are used instead of total infrastructure PPP investments, the increases average about US\$173 million to US\$213 million, depending on whether we consider immediate effects or effects with one, two, or three years of delay. Whereas the estimated average increases in transport PPP investment are lower than with PPP investments across infrastructure sectors, the most statistically significant<sup>10</sup> effect is found at two years of delay with transport PPP



investment, with an average increase of US\$211 million.<sup>11</sup> Finding a more statistically significant correlation for transport aligns with expectations. First, PPP projects are complex to prepare, and therefore, it may take a few years after the reform to see projects reaching financial closure. Second, the BID database mainly captures reforms in the transport sector. As previously mentioned, BID 2023 uses highway transport projects as a guiding example to ensure cross-comparability. Consequently, other sector-specific reforms are not always captured under the reform variable. The correlations mentioned above are estimated for the average country with a mean GDP per capita of approximately US\$4,000 during 1990-2019.

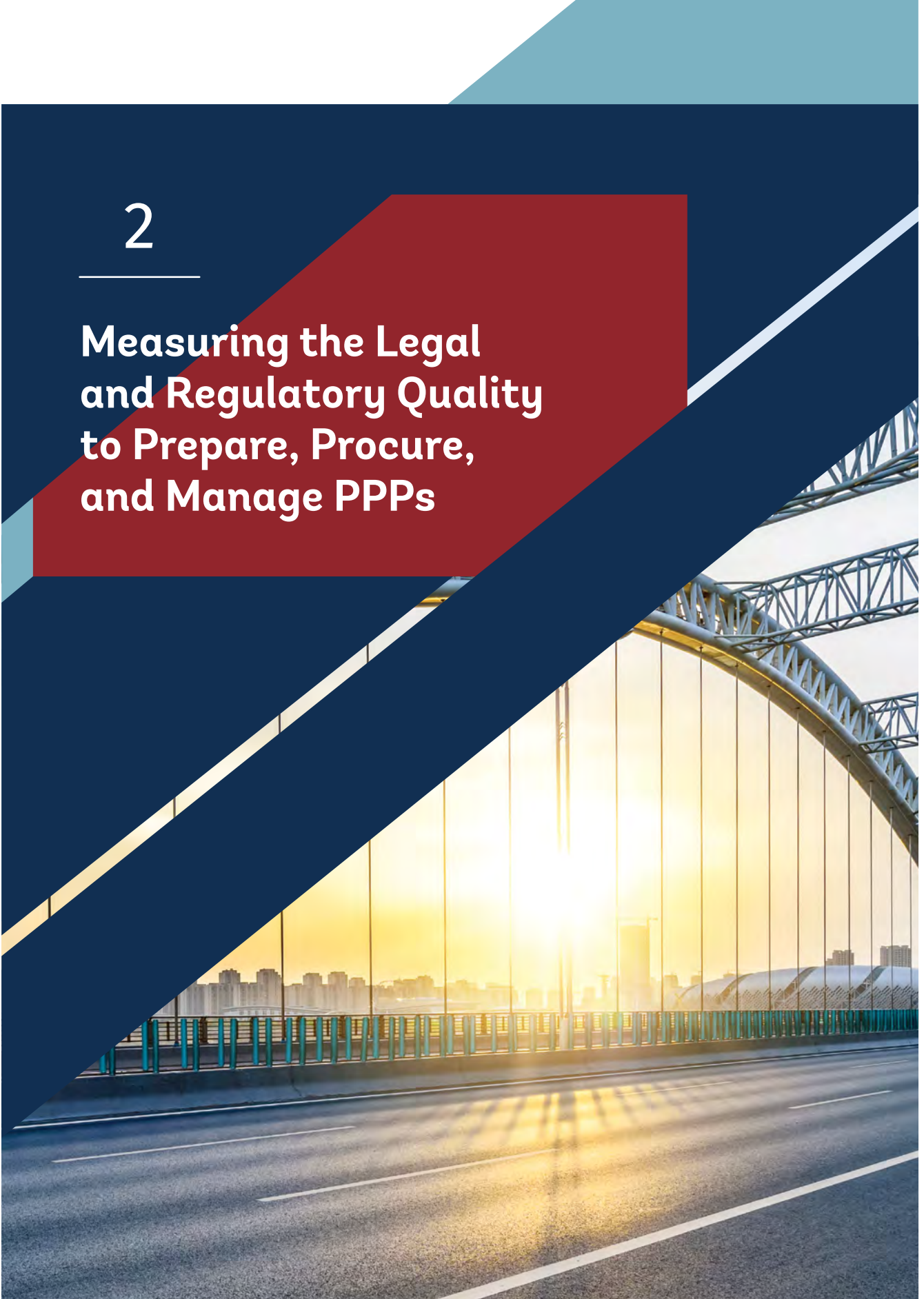
Although these results cannot be interpreted as definitively asserting that regulatory reforms cause an increase in PPP investments, there is a significant association between the two. Specifically, the data suggest that when major PPP regulatory reforms are implemented, there tends to be an increase in PPP investments.

The following sections analyze in more detail the quality of PPP regulatory frameworks worldwide and the regulatory reforms in the adoption of international good practices (Chapter 2). In Chapter 3, country case studies illustrating the regulatory reform process and its complexities are presented.



# 2

## Measuring the Legal and Regulatory Quality to Prepare, Procure, and Manage PPPs



This section leverages data from BID 2023 to assess the regulatory quality of PPP frameworks in 140 economies in four thematic areas: preparation, procurement, contract management, and unsolicited proposals (USPs), highlighting major trends. It also analyzes the regulatory reforms since the last BID 2020 edition (i.e., reforms spanning from June 1, 2019, to June 1, 2022) and pinpoints areas where adoption of international best practices could be improved. This section covers the overall PPP regulatory framework and institutional arrangements, as well as the preparation, procurement, contract management, and disclosure of information in PPP projects.

## Regulatory Frameworks and Institutional Arrangements for PPP Projects

BID 2023 covers a wide array of economies with different legal, regulatory, and institutional systems. Among the 140 economies measured, the legal approach to preparing, procuring, and managing PPPs varies.

There are many ways to set up legal and institutional frameworks for PPP projects. No single approach works best for all economies, and the most suitable way will depend on the administrative and legal traditions in place as well as on the government's priorities, goals, and objectives. Therefore, the current report does not score economies based on their specific approaches to governing PPPs. Instead, it aims to provide contextual information by exploring various regulatory and institutional set-ups, which can help better understand thematic areas scored in the following sections: preparation, procurement, contract management, and unsolicited proposals.

### Regulatory Frameworks for PPPs

Economies around the world adopt different legal approaches to regulate PPPs, depending on the legal tradition in place, the political commitment to PPPs, and the desired objectives. In general, two main legal configurations exist: on the one hand, a PPP-specific framework comprised of PPP laws, regulations, guidelines, or policies explicitly addressing the identification, preparation, and implementation of PPP projects, and on the other hand, a more general framework for public procurement. Either option can lead to robust PPP frameworks so long as PPP requirements are well specified and project governance and decision-making processes are clearly defined.

The adoption of PPP-specific laws and regulations can undoubtedly be considered an effective tool to foster PPP development. By themselves, however, such laws and regulations do not necessarily guarantee a high-quality PPP regulatory framework, much less the success of the PPP program, which requires ingredients beyond a good regulatory framework. PPP-specific regulations must be properly embedded in a broader regulatory framework, particularly in public procurement laws and regulations, to avoid legal vacuums. For example, stand-alone PPP laws that explicitly exclude the subsidiary application of public procurement rules (for areas not specifically covered by the PPP law) are more likely to leave legal voids.

Conversely, the lack of a PPP-specific law does not, in and of itself, result in a less mature PPP market. In fact, many economies with mature PPP markets, such as Australia, have developed successful PPP programs using general procurement regulations complemented by PPP-specific

guidelines without enacting a stand-alone PPP law. Any legal framework can create an environment favorable to the effective development and implementation of PPPs, provided that all key elements affecting the PPP process are addressed without conflicting with the existing laws in force.

BID 2023 data show that most economies adopt different instruments governing PPPs with varying legal significance. In fact, 109 of the 140 economies (78 percent) have a PPP-specific regulatory framework in the form of PPP laws, regulations, guidelines, policies, and manuals. Moreover, 79 economies have PPP-enacted laws (56 percent).

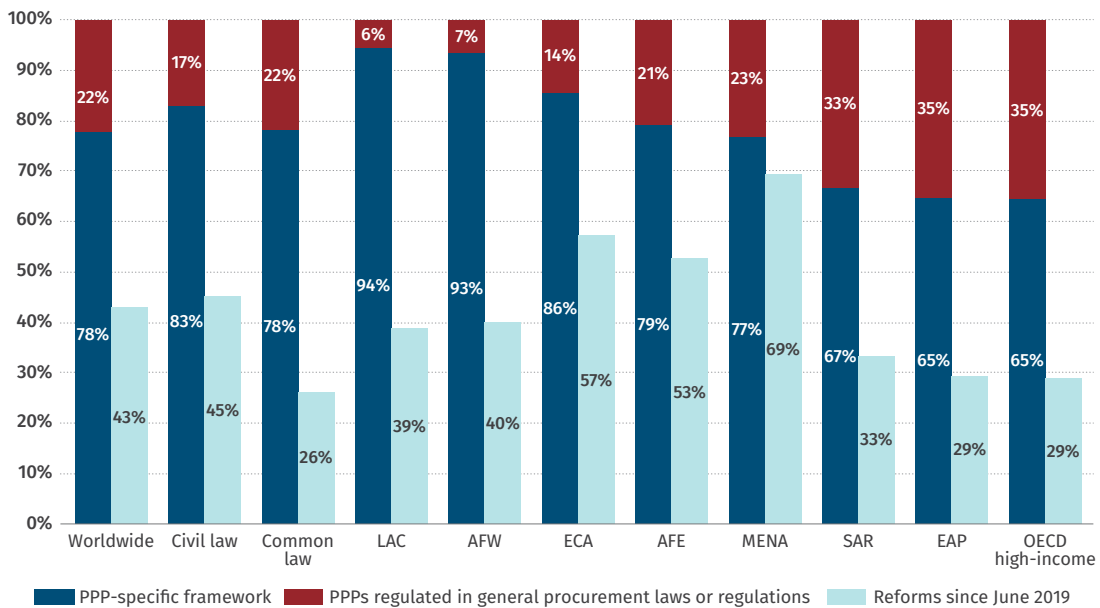
In theory, economies with civil law legal systems characterized primarily by the codification of core legal principles are more likely to have stand-alone PPP legislation and regulations. The data reveal, however, that the difference between the percentage of common law economies (78 percent) and the number of civil law economies with a PPP-specific framework (83 percent) is only minimal (Figure 4).

Globally, for economies that adopt PPP-specific regulatory frameworks, some regional variations emerge. Latin America and the Caribbean (LAC) is the champion of this trend, followed by Western and Central Africa (AFW) (94 percent and 93 percent, respectively), whereas the East Asia and Pacific (EAP) and Organisation for Economic Co-operation and Development (OECD) regions display the lowest adoption rate of this practice among all regions (65 percent) (Figure 4).

It is important, thus, to note that the characterization of a PPP-specific framework as opposed to a public procurement framework is not necessarily based simply on the existence of a PPP-specific law. Though this is the case in most of the economies measured in this report, the reality is much more nuanced. For example, Australia and Malaysia have developed PPP-specific guidelines and standardized documents while applying a public procurement framework. Other economies adopted stand-alone PPP laws to regulate certain aspects of PPP projects while referring to public procurement laws and regulations for other matters. Lebanon, for instance, regulates the standstill period under the general framework for public procurement. On the other hand, economies like Sudan and Qatar have adopted new PPP laws expressly, excluding the application of the general public procurement laws and regulations to PPP projects.



**Figure 4: PPP-Specific Frameworks and Regulatory Reforms Since June 2019, by Legal System and Region (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia.

Lao PDR adopted a decree to regulate PPPs, whereas seven other economies, namely Armenia, the Dominican Republic, Ghana, Montenegro, Qatar, Saudi Arabia, and Sudan, introduced their first laws specifically addressing PPPs in the period from June 1, 2019, to June 1, 2022. This growing number of economies illustrates a preference for addressing PPPs separately rather than relying on a more general set of rules for public procurement. Over the same period, seven economies restructured their legal frameworks by adopting new PPP-specific laws repealing and replacing previous stand-alone PPP laws, namely Burkina Faso, Jordan, Kenya, the Kyrgyz Republic, Malawi, Senegal, and Togo. Other economies opted for the amendment of their existing PPP laws. This is the case in Egypt, Morocco, North Macedonia, and Pakistan.

There have been a significant number of PPP regulatory framework reforms since June 2019. In total, 60 out of 140 economies (43 percent) introduced some changes that affected their PPP regulations. Most civil law economies have undergone minor or major reforms (45 percent of civil law economies and 26 percent of common law economies) (Figure 4). In terms of regional disparity, the regions that have seen the most changes in the legal framework governing PPPs are the Middle East and North Africa (MENA), followed by Europe and Central Asia (ECA) and Eastern and Southern Africa (AFE), with 69 percent, 57 percent, and 53 percent, respectively (Figure 4).

Although not all these reforms resulted in a significant impact on the quality of the PPP legal environment as measured by BID 2023, individual cases have seen a large increase in the attributed score. For example, Togo has profoundly redefined its legal framework by introducing a new PPP law and implementing decrees, which has led to the most significant increase in the scores attributed to all thematic areas.



## Institutional Arrangements for PPPs

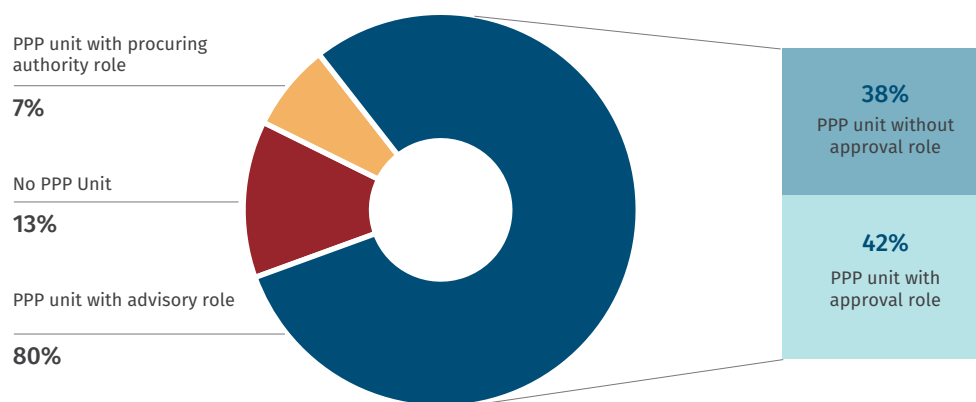
There is no one-size-fits-all institutional arrangement for PPPs, just as there is no one-size-fits-all regulatory framework. BID 2023 does not score institutional setups. However, understanding how economies have restructured their institutions by establishing PPP units or setting dedicated support funds for project preparation is important to inform future reforms.

### PPP Units

Given the complexity of PPPs, it is standard practice to have a specialized government entity, namely a PPP unit, to facilitate the development of PPP programs and provide administrative and technical support. Eighty-seven percent of surveyed economies have a dedicated PPP unit, slightly higher than the 84 percent reported in 2020. The Dominican Republic, Panama, and Qatar have recently established their first PPP units. Only 13 percent of surveyed economies (18 economies) do not have a PPP unit, as shown in Figure 5.

Though the duties and functions of PPP units vary, three major roles are distinguished. First, activities representing the advisory role of the PPP unit. This role is held by 80 percent of the surveyed economies (Figure 5) as opposed to 77 percent measured in BID 2020. Advisory activities include the following tasks: PPP regulation and policy guidance (76 percent); capacity building for other government entities (75 percent); promotion of the PPP program (74 percent); technical support in the implementation of PPP projects (72 percent); and oversight of PPP implementation (66 percent). The second role is the procuring role of PPP units. Only a few economies (7 percent) have centralized PPP procuring authorities in PPP units (Figure 5). No variation has been noted since BID 2020. The third role is the approval authority. The percentage of PPP units with approval authority is only slightly higher (42 percent) than the ones that opted for a PPP unit unable to approve PPP projects (38 percent) (Figure 5).

**Figure 5: PPP Units' Roles in the PPP Process (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Typically, one of the most important aspects of establishing a new PPP framework is creating a PPP unit. For instance, in the Dominican Republic, the General Directorate of PPPs was established as the centralized government agency in the area of PPPs as part of the PPP law and related regulations enacted in 2020. Since June 2019, two more economies have passed reforms, resulting in the establishment of their first PPP units, namely Panama creating the PPP National Secretariat in 2019, and Qatar creating a PPP Department within the Ministry of Commerce and Industry in 2020. The newly established PPP units in the Dominican Republic, Panama, and Qatar share the same core advisory functions as the majority. Interestingly, only Qatar has vested its PPP unit with approval authority.

## Project Development Funds

The complexity and long-term implications of PPP projects require that, prior to initiating a PPP procurement, the procuring or relevant authority ought to complete thorough due diligence and carry out rigorous assessments to determine the feasibility of the project and its viability. This preliminary phase is crucial to ensuring that only a well-structured and commercially viable PPP project capable of providing value for money goes to the procurement phase.

The cost of properly preparing a PPP is typically higher than that for a traditional public procurement project, primarily because PPP projects call for additional feasibility studies. In addition to the socio-economic, technical, environmental, and social assessments, PPPs also require value-for-money assessment, risk analysis, and market sounding to ensure their successful implementation.

For many economies, the high upfront cost of project preparation is a major obstacle to developing robust PPP programs. For others, a lack of the required skills, expertise, and institutional capacities hampers the development of quality projects. The establishment of a project development fund (PDF) with a sustainable source of financing and relevant expertise can address these challenges and ensure the effective and successful preparation of PPP projects.

BID 2023 captures the existence of a dedicated fund mechanism to support PPP projects in the pre-investment stage, irrespective of its structure.

Globally, 35 out of the 140 surveyed economies (25 percent) have laws providing for the creation of a central financial support mechanism for project preparation. Interestingly, 16 out of those 35 economies with PDFs are lower-middle-income, nine are upper-middle-income, and six are high-income-OECD. Afghanistan, Burkina Faso, Tanzania, and Uganda are the four low-income economies that have legal provisions for the creation of PDFs.

Since the 2020 edition, six economies have passed reforms, resulting in the establishment of PDFs for project preparation, namely Cambodia, Greece, Jordan, Morocco, Senegal, and Tunisia. Of these economies, only Morocco has PDF-specific legislation.<sup>12</sup> Tunisia's Finance Law<sup>13</sup> establishes its first PDF, whereas in the remaining economies, the PDF is created by a provision included in the PPP law.

It is worth noting that most of these PDFs are in the very early stages of creation, have not yet been fully operational, and are not staffed. For example, though the PPP law in Senegal provides for establishing a PDF to support and finance the preparation, awarding, and execution of PPP projects, the decree specifying the financing terms, organization, and operation of the fund has not been adopted yet. In Tunisia, the government announced in June 2023 that the PPP Support Fund (Fonds d'appui aux Partenariats Public-Privé)<sup>14</sup> is operational and has begun its fundraising efforts. Indonesia is an example of an economy with a more mature PDF (Box 1).

PDFs are not necessarily established institutions. For instance, in Jordan, the 2020 PPP law created a separate bank account for the PPP unit's expenditures related to preparing PPP projects. The account funds, inter alia, studies, experts' costs, and reports relevant to PPP projects.<sup>15</sup> However, Cambodia set up a more institutionalized fund, namely the Project Development Facility,<sup>16</sup> to financially support implementing agencies, covering the costs of the consultants assisting with project development and/or appraisal and other relevant tasks.<sup>17</sup>

#### **Box 1: Example of a Well-Established Project Development Fund: The Case of Indonesia**

Indonesia has a history of establishing dedicated financial facilities to support government contracting authorities in preparing projects. It initially created a project development fund (IPDF) within the Ministry of National Development Planning (BAPPENAS), in 2006, with US\$22 million of project preparation funding to support a wide range of projects.<sup>18</sup> In total, IPDF has supported the preparation of more than 30 projects. However, only three were successfully awarded, and only 65 percent of funding was expended. This was mainly due to several challenges hindering effective project preparation, namely, weak capacity for PPP project identification, insufficient coordination with implementing agencies, and lack of commitment to deliver projects as PPPs.<sup>19</sup>

After this initial attempt, the Project Development Facility (PDF) was established within the Ministry of Finance as a separate team under the PPP unit. The PDF was formally established by Regulation No. PMK265/2015, further operationalized by Regulation No. 73/2018, and subsequently amended by MoF Decree No. 180/2020. The World Bank Indonesia Infrastructure Finance Development (IIFD) Program assisted the government of Indonesia in implementing the above-mentioned MoF decrees. The PDF runs on annual budgetary allocations and is administered by the PPP unit, which manages the PDF funds and screens applications for support. The PPP unit is assisted in implementing PDF activities by the state-owned non-bank financial institutions PT SMI and the Indonesia Infrastructure Guarantee Facility (IIGF), which support the procurement of consultants and capacity building for individual PPP projects receiving PDF support. Moreover, this institutional arrangement has been helpful in providing finance to local governments.

The World Bank IIFD program contributed to the preparation of 32 projects through the PDF and facilitation of 25 PPP projects to reach financial close at a total investment value of US\$14 billion. As of mid-2022, the PDF supported roughly half of the PPP projects that had successfully reached financial closure in the economy and had 20 projects in the pipeline.<sup>20</sup>

One of the critical lessons learned from developing a PDF is the importance of identifying the right institution to house the fund, and the financial institutions to assist with project structuring, financing, and guarantees. In Indonesia, having the institutions with the necessary expertise and resources was crucial in fostering a demand-driven approach, especially from local governments.



## Preparation of PPPs

The preparation phase for PPPs comprises several key stages, commencing with identifying projects that may be suitable for delivery as PPPs. The procurement authorities select and prioritize potential projects aligned with integrated infrastructure plans and goals. The fiscal implications of PPPs, including their budgetary, accounting, and reporting treatment, should also be identified.

A PPP project's viability depends on the number of preliminary assessment results. Feasibility studies are commonly used to achieve this goal and include the project's socioeconomic analysis, financial viability, risk allocation mechanism, potential market participant interest and available technology (market sounding), procurement strategy, VfM, and fiscal affordability. At this stage, social and environmental impact assessments should be conducted as well. In addition, it is considered good practice to make the findings of such evaluations public by including them in the request for proposals (RFP) or tender documents and by making them available online.

The last step of the preparation phase includes developing and disclosing documents required to launch a procurement process, including preparing a draft contract and its summary. This stage occurs after the structure of the PPP transactions has been defined. As good international practices advise, PPP contracts should be standardized and made available to the public to ensure transparency and consistency throughout the procurement process.

One of the biggest obstacles procuring authorities encounter when attempting to attract private-sector financing is a lack of well-structured PPP projects. It is essential to comprehend, promote, and implement the recognized good practices for preparing PPP projects outlined in Box 2. These practices can increase the likelihood of the project's success.

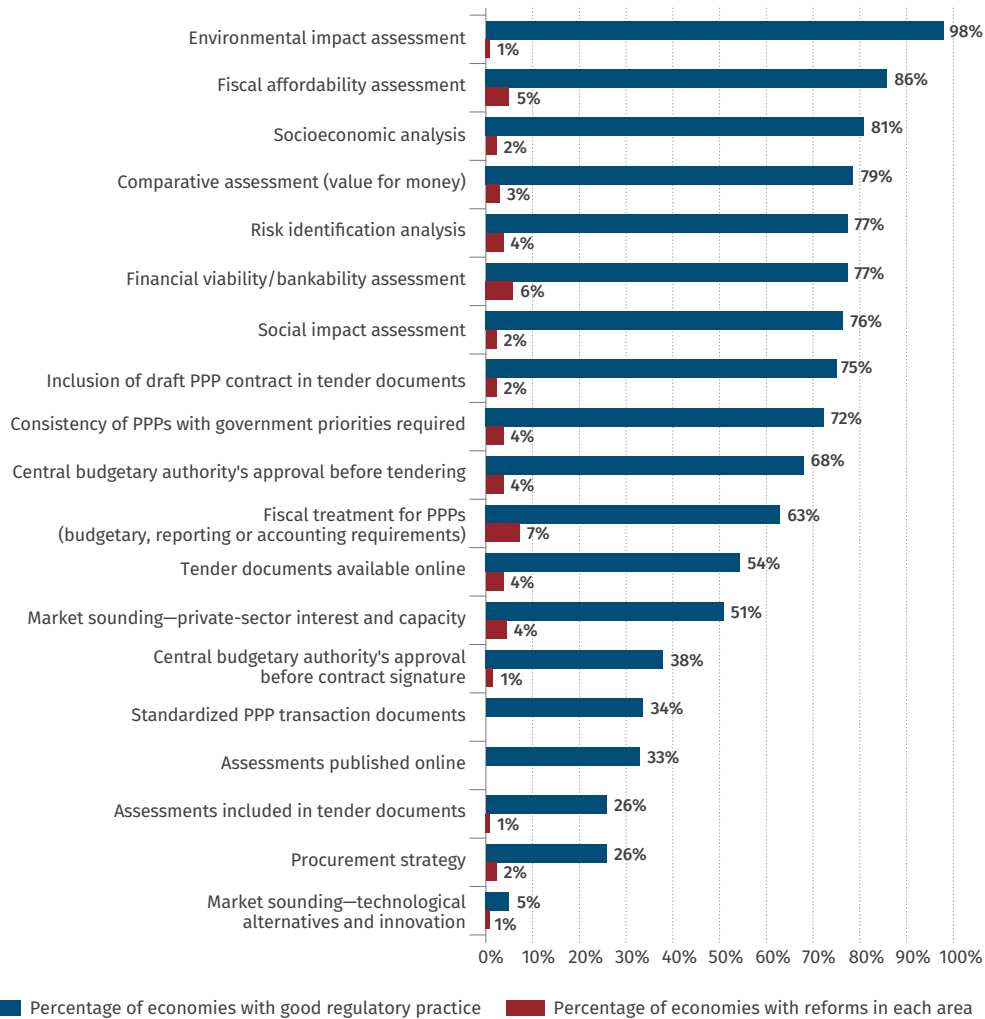
## Box 2: Preparation of PPPs: Good Practices Scored in Benchmarking Infrastructure Development 2023

Good practices that help ensure a well-informed decision to deliver a PPP project, and that all necessary groundwork was done before launching, include the following:

- The Ministry of Finance or central budgetary authority assesses, accounts for, and signs off on the long-term fiscal implications of a project, before both launching procurement and signing a contract.
- There is a system in place to track the fiscal impact of PPPs, such as inclusion of PPP projects in the budget, and accounting for and reporting on them.
- The project is selected, assessed, and prioritized together with all other public investment projects in accordance with national public investment plans and strategies.
- The project is adequately justified based on the following types of assessments:
  - › Socioeconomic analysis;
  - › Fiscal affordability assessment;
  - › Risk identification, allocation, and assessment (risk matrix);
  - › Comparative assessment to evaluate whether a PPP is the best option to deliver a project, including public sector comparator or value-for-money analysis;
  - › Financial viability or bankability assessment;
  - › Procurement strategy;
  - › Market sounding assessment regarding potential interest for a project among market participants;
  - › Market sounding assessment to identify solutions and technology available, as well as opportunities for innovation;
  - › Environmental impact assessment, including a consultation process with affected communities; and
  - › Social impact assessment, including a consultation process with affected communities.
- The results of the above-mentioned assessments are included in the tender documents.
- The results of conducted assessments are published online.
- The tender documents are published online.
- The procuring authority prepares a draft PPP contract and includes it in the request for proposals and/or tender documents.
- The procuring authority has developed standardized PPP contracts and/or transaction documents to facilitate the procurement process and to guarantee consistency.

Of the 19 good practices scored for the preparation phase, 17 showed moderate improvement since BID 2020 (Figure 6). Whereas assessments such as environmental (98 percent), fiscal affordability (86 percent), socioeconomic (81 percent), value for money (79 percent), risk identification and allocation (77 percent), and financial viability or bankability (77 percent) remained the most adopted, the latter shows the largest increase since BID 2020, with a 6 percent increase in the adoption of bankability assessments worldwide. There is a significant difference between the most and least adopted good practices. Only 5 percent of the surveyed economies require market sounding for technology and innovations, showing a mere 1 percent increase since BID 2020.

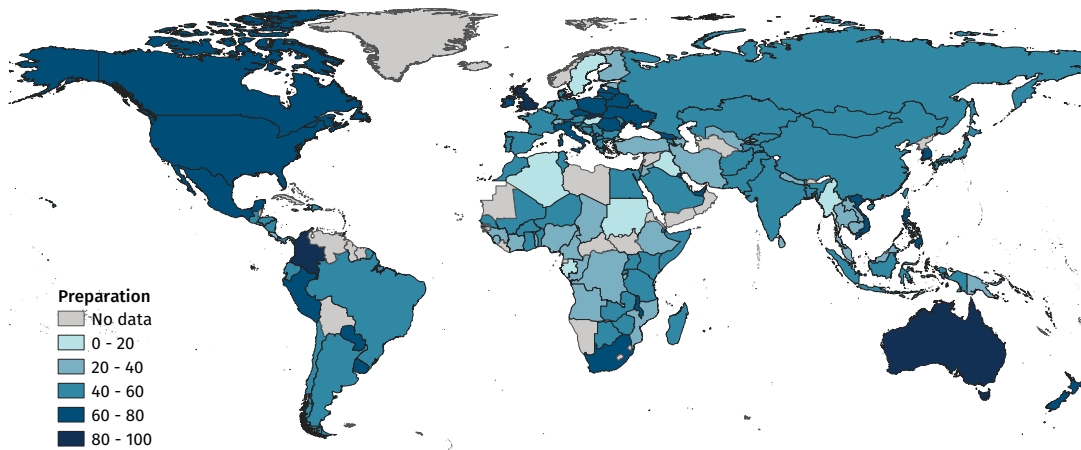
**Figure 6: Share of Economies That Adopt Good Preparation Practices by Scored Areas (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

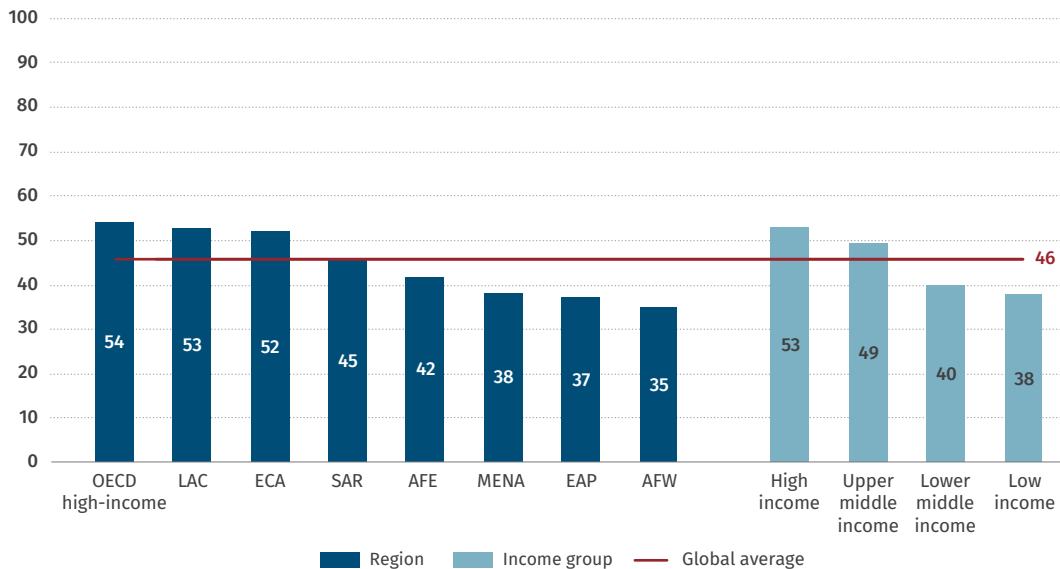
The BID 2023 data show regional variation and income group differences in the average score for the preparation phase (Figures 7 and 8). The OECD and high-income economies continue to outperform all other regions and income groups, with scores of 54 and 53 points, respectively. Latin America and the Caribbean (LAC) (53 points), Europe and Central Asia (ECA) (52 points), and the OECD-high-income region score above the global average of 46 points. Disaggregating the data by income level reveals that the lower an economy's income level, the lower its average score for the project preparation phase.

**Figure 7: Global Overview of PPP Preparation Scores (score 1–100, N=140)**



Source: Benchmarking Infrastructure Development 2023.

**Figure 8: Preparation of PPPs, Average Score by Region and Income Group (score 1–100, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia.

The following subsections present and discuss the main findings for the different assessments of PPP projects and the fiscal treatment of PPPs.



## Assessments of PPPs

The success of PPP projects relies heavily on accurate assessments, and it is essential to conduct a detailed analysis of the project's influencing factors early on. A good assessment of PPP projects contributes to identifying projects of the utmost quality with a high probability of achieving financial close and producing the desired outcomes. The assessment process allows the procuring authority to fully comprehend the project's feasibility and establish the project's structure well before designing a comprehensive PPP contract.

Given the significance of PPP assessments, the BID 2023 survey asks whether the following evaluations are conducted during the preparation stage: 1) socioeconomic analysis;<sup>21</sup> 2) fiscal affordability assessment; 3) risk identification, allocation, and assessment (risk matrix); 4) comparative assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (sometimes known as a value-for-money assessment, although the question coverage is not limited to this particular methodological approach);<sup>22</sup> 5) financial viability or bankability assessment; 6) procurement strategy; 7) market sounding,<sup>23</sup> divided into two components: (a) including the potential interest from contractors and capacity in the market for the contract, and (b) specifically designed to identify the solutions and the technology available as well as the opportunities for innovation; 8) environmental impact assessment, which includes a consultation process with affected communities; and 9) the social impact assessment, including a consultation process that involves affected communities.

In addition, this study also analyzes whether the surveyed economies have established methodologies for each of those assessments, and whether they are consistently employed across different PPP projects. A standardized methodology is beneficial for increasing government transparency and building institutional capacity, because it establishes objective and uniform criteria, is publicly available, and is readily applicable to multiple PPP proposals. A methodology may consist of supporting materials or methodological guidelines, such as guides for designing and evaluating investment projects.

Although by only small percentages, the adoption of all 10 assessments has increased since BID 2020. The largest increase was in the adoption of fiscal affordability assessments in 6 percent of the economies.

The **environmental impact assessment (EIA)** remains the most commonly required evaluation, at 98 percent (Figure 9), with an increase of 1 percent explained by reforms in Ecuador. Since the BID 2020 edition, Ecuador has introduced the PPP regulation<sup>24</sup> that emphasizes the importance of conducting EIAs and performing project feasibility studies, bringing the total number of economies that regulate EIA to 137. The prevalence of the EIA is explained by the general applicability of broader national environmental laws to PPPs. These laws require the EIA to be carried out for any large infrastructure project regardless of the delivery mechanism. Although Morocco already had the EIA requirement in place, it has also adopted a new handbook of good practices that details the EIA methodology.<sup>25</sup>

Despite being less prevalent, the **social impact assessment (SIA)** is required in 76 percent of economies, and 52 percent of economies also require a consultation process with affected communities during the SIA, recognizing the importance of community engagement. Similar to EIA, the requirement to conduct an SIA is often within the scope of environmental impact studies. Since the BID 2020 edition, there has been an increase of 2 percent in economies adopting SIA, namely Cambodia, Tanzania, and the United Arab Emirates. For example, the new PPP regulation in Tanzania



details the prominent aspects of the proposed project, including a description of the environmental and SIA.<sup>26</sup> Also, Ukraine now has a new methodology in place analyzing the social consequences of PPP implementation.<sup>27</sup>

The **fiscal affordability assessment** for PPPs is the second most required assessment, with 86 percent of economies including this analysis in their regulatory framework. By conducting this assessment, the government compares the public interest and social return to the project's cost and assesses the project's long-term fiscal and budgetary impact. The fiscal affordability of PPPs appears to be receiving increasing attention in the regulatory framework. Since the publication of the BID 2020 edition, seven<sup>28</sup> of the assessed economies have adopted new legislation requiring a fiscal affordability assessment as part of the preparation phase for PPP projects, and three economies, namely Argentina, the Dominican Republic, and Jordan, have devoted specific methodologies for conducting such assessments. For instance, in its 2022 fiscal commitments and contingent liabilities operational and procedural manual, Jordan<sup>29</sup> specifies a methodology and calculation methods. The Jordan PPP guidelines also provide an approach for conducting affordability evaluations.

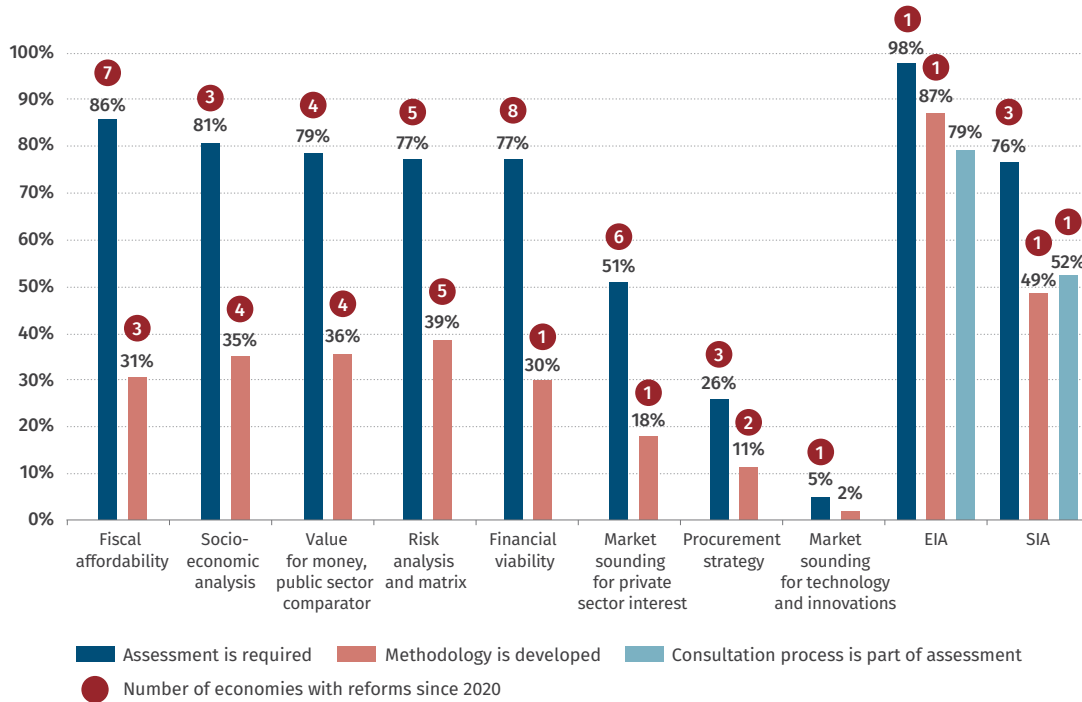
The **financial viability and bankability** assessments have been newly implemented in eight economies (Cambodia, Chad, Jordan, Montenegro, Qatar, Panama, Sudan, and Senegal), as shown by the BID 2023 data. This is the type of assessment with the largest number of reforms. The financial viability or bankability evaluation compares the cost of operating, maintaining, and replacing assets to the project's benefit using market pricing. In Senegal, for instance, the PPP decree stipulates that the preliminary evaluation includes a financial feasibility study to demonstrate the financial robustness of the PPP project, taking into account the expected revenues and the corresponding financial and operating costs.<sup>30</sup> Only one economy, Indonesia, has adopted a methodology to determine the mechanism of return on investment to assess the project's feasibility based on economic and financial criteria.<sup>31</sup>

The **procurement strategy** is an assessment that is rarely required. Since the previous edition of this initiative, only three economies have adopted new regulations on this, namely the Arab Republic of Egypt, Brazil, and the United Arab Emirates, with 26 percent of economies requiring one as part of their legislative framework (and only 11 percent with a specific methodology). This evaluation would include a fast assessment to plan and strategize the tendering process in advance to suit the intended purpose. Notably, two economies, Egypt and the United Arab Emirates, have also developed a specific methodology for performing such an assessment. For instance, in the United Arab Emirates, the project procurement strategy and roadmap are part of the Department of Finance (DoF) PPP Guidelines.<sup>32</sup>

**Market sounding** continues to be one of the least required assessments. Market sounding for private sector interest is required in 51 percent of the surveyed economies, whereas market sounding for technology and innovation is required in only 5 percent. Six economies (Cambodia, Ecuador, Ghana, Montenegro, Tanzania, and Sudan) have introduced new legislation requiring market sounding for private sector interest. For example, in Ghana, the new PPP Act requires the promotion of the PPP project to prospective bidders without limiting competition using market sounding, among others,<sup>33</sup> and in Tanzania, the new regulation requires the contracting authority or PPP advisor acting on behalf of the contracting authority to conduct a market sounding assessment, during or following the preparation of the feasibility study.<sup>34</sup> The survey also assesses whether the market sounding assessments are designed to identify opportunities for innovation. This is the least commonly performed assessment when preparing PPPs. This *BID* report reveals that there has been a marginal improvement in that area; for example, according to the new PPP law in Brazil, the market survey consists of an analysis of possible alternatives and technical and economic

justification for choosing the type of solution to be contracted.<sup>35</sup> Overall, market sounding remains an area that requires substantial development.

**Figure 9: Assessments Conducted During the PPP Preparation Phase (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.  
 Note: EIA stands for environmental impact assessment. SIA stands for social impact assessment.

## Fiscal Treatment of PPPs

Almost all PPPs involve some form of fiscal commitment, either because they are explicitly structured as government-pays PPPs or because they require government assistance to be marketable and bankable. Full recognition and comprehension of the level of public commitment entailed by a PPP are not automatic. Typically, the upfront cost of the investment is not borne by the government but is embedded in the financial structure, to be paid over a long period of time, with availability payments from the government (in government-pays PPPs) or user fees (in user-pays PPPs, which can ultimately be viewed as potentially foregone government revenue). Although there is a wide variety of potential public commitments, they can be divided into two broad categories: 1) direct liabilities, such as availability payments or shadow tolls, whose values are usually set out in the contract; and 2) contingent liabilities, such as guarantees or compensation clauses, whose occurrence, timing, and amount are contingent on some unforeseeable future events beyond a government’s control.

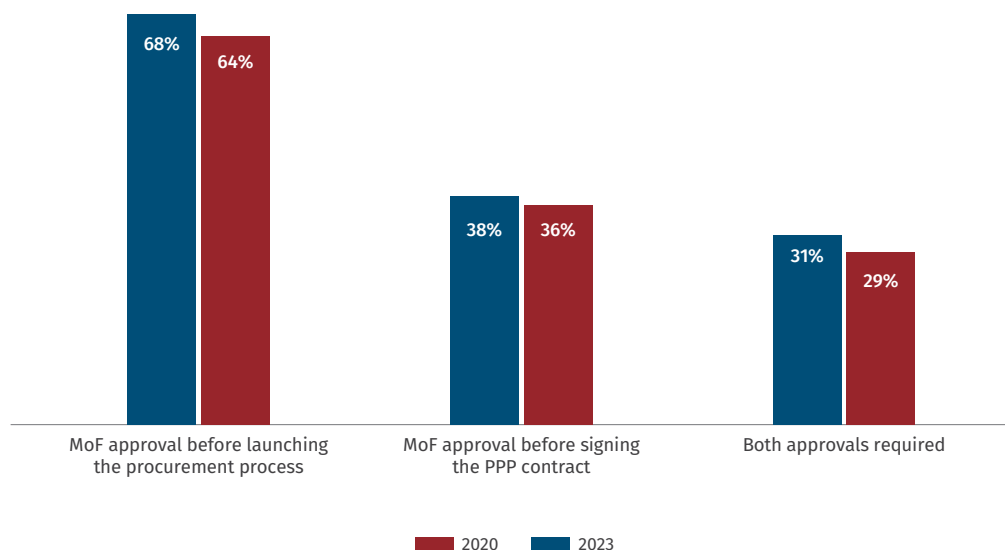
A robust public fiscal management system and specific PPP-related provisions are desirable to ensure that fiscal commitments resulting from PPPs are utterly recognized. This also helps mitigate any potential challenges to overall fiscal sustainability that a distressed or canceled PPP could create. The PPP fiscal treatment provisions are intended to increase the transparency of existing

commitments and prevent fiscally risky transactions (see Herrera Dappe et al. (2023) for further analysis of the fiscal implications). Economies with such provisions are anticipated to have more financially resilient PPP portfolios and fewer concealed liabilities resulting from PPPs, which may be especially relevant during times of turmoil. BID 2023 evaluates a set of pillars comprising a robust economic framework for PPPs, including the fiscal affordability assessment covered in the previous section.

Providing the Ministry of Finance (MoF) or central budgetary authority with controlling power before the execution of PPP contracts is another crucial element in establishing such a rigorous framework. The legal and regulatory framework should explicitly delegate this responsibility to the MoF. Being responsible for the overall fiscal sustainability of an economy, the MoF or central budgetary authority is in the best position to determine whether a PPP is fiscally sustainable, and acts as a counterbalance to spending agencies that typically serve as procuring authorities.

Before initiating the PPP procurement procedure, approval by the MoF or central budgetary authority is required in 95 of 140 economies surveyed (68 percent). This initial PPP approval process can significantly influence the project preparation quality and financial structure. However, only 38 percent of the economies surveyed require a second approval by the same authorities before signing a PPP contract. This may also be necessary to guarantee that the project remains fiscally affordable following any significant changes that may have occurred during the tendering process. Since BID 2020, two more economies, Armenia and Montenegro, require both approvals, giving the MoF a more comprehensive veto power and increasing the total number of economies to 44 (31 percent). Figure 10 shows the MoF's approval power in the procurement process.

**Figure 10: MoF Approvals of the Procurement Process (percent, N=140)**



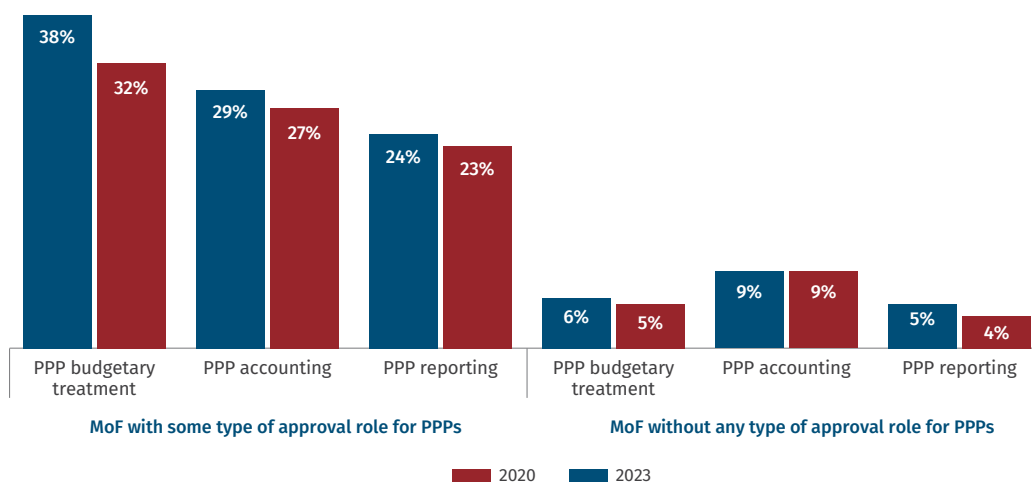
Source: Benchmarking Infrastructure Development 2023.  
 Note: MoF = Ministry of Finance.

Specific provisions regulating the budgeting, reporting, and accounting treatment of PPPs are another part of a robust framework for the fiscal treatment of PPPs. The BID 2023 data reveal that two more economies, Ghana and Ukraine, now have all three aspects regulated, increasing the total

number of economies to 19 out of the 140 surveyed. Although Ghana already had budgeting and reporting obligations in place, it adopted a new PPP Act requiring the controller and accountant general to ensure that transactions related to PPP projects are covered in the National Accounts.<sup>36</sup> Sixty-one economies (44 percent) have specific provisions regarding the budgetary treatment of PPPs, whereas 53 (38 percent) have implemented some form of regulatory provision regarding the accounting treatment of PPPs. Reporting liabilities remains the least regulated instrument, with only 41 economies (29 percent) having a legal provision concerning the matter.

Figure 11 illustrates an interesting correlation between the elements discussed above. Most economies that have adopted specific provisions for PPPs’ budgetary, reporting, and accounting treatments also require the approval of the MoF or central budgetary authority. Even though the overall numbers are low, economies that have assigned a formal gatekeeping responsibility for PPPs to the MoFs are more likely to have established specific budgeting, reporting, and accounting requirements for PPPs. Certain European Union economies (for example, Greece, Poland, Germany, and Austria) are required to follow European System of Accounts (ESA) accounting standards, making up the larger proportion (9 percent) of economies that follow specific accounting standards while not having provided their MoF with approval authority.

**Figure 11: Fiscal Treatment of PPPs in 2020 and 2023 (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.  
 Note: MoF = Ministry of Finance; PPPs = public-private partnerships.

There are many forms of budgetary treatment provisions, but they all entail an express recognition of the long-term impact of PPP liabilities. This could be a requirement to approve the full commitment of a project at inception or a limit on the total liabilities from a PPP portfolio. Nine economies have implemented new PPP budgetary provisions as part of broader PPP regulatory reforms since the BID 2020 report: Armenia, Cambodia, the Dominican Republic, Jordan, Malawi, Montenegro, Panama, Saudi Arabia, and Togo. For example, in Panama, the new PPP law requires that during the term of the PPP contract, the Ministry of Economy and Finance will be in charge of developing the methodology to evaluate the impact of the PPP project on the specific public expenditures of the contracting public entity and the general budget of the state,<sup>37</sup> and in Malawi, the new PPP Act now requires that PPP project costs be included in annual budgets.<sup>38</sup>

Since BID 2020, four economies have adopted new reporting obligations, namely the Dominican Republic, Jordan, Panama, and Ukraine, reaching 29 percent in BID 2023. Effective reporting of liabilities arising from PPPs supports solid public financial management of the PPP program. For instance, according to the new PPP law in the Dominican Republic, each year, the MoF will publish an evaluation of the firm and contingent liabilities arising from current PPP contracts.<sup>39</sup> In Jordan, there is a requirement to publish a report on each PPP project, including its financial and budgetary obligations.<sup>40</sup>

Accounting refers to how PPPs are treated in national accounts (for instance, which party assumes the PPP-related debt on its balance sheet as a liability). The OECD economies that are members of the European Union are subject to the common ESA, which requires the public sector to account for PPP-related debt if it retains a substantial portion of the risk in the PPP project. The International Public Sector Accounting Standards (IPSAS) serve as a model for the accounting treatment of PPPs, but only about 10 percent of economies have adopted them. According to IPSAS, a PPP must be included in the public sector balance sheet if the public sector retains control of the service provided and a residual interest in the project. Since the last edition of the report, Ghana has been the only economy to adopt a new regulation requiring that the “Controller and Accountant General, in reporting PPP transactions in the National Accounts, apply the International Public Sector Accounting Standards relating to PPPs arrangements and projects.”<sup>41</sup>

As a final point, BID 2023 assesses whether the government discloses PPP liabilities in a publicly accessible online platform or database. There are now a total of 18 economies, and two of them (Armenia and Ukraine) have implemented new regulations since the last edition of the study to make the data accessible online. For instance, in Ukraine, the Ministry of Economy maintains a register of long-term obligations within the framework of PPPs and posts relevant information on its official website following the procedure determined by the Cabinet of Ministers of Ukraine.<sup>42</sup> Although this type of mechanism aids in ensuring PPPs are managed transparently and adequately, it is evident that it is still not widely adopted among the surveyed economies.

## Procurement of PPPs

A successful PPP project depends heavily on working with the correct private partner. Ultimately, how much value the private partner can bring forth via innovation and increased efficiency will determine whether the government meets its envisioned value for money. To select the right partner, a procuring authority typically conducts a public bidding procedure in compliance with either the general public procurement norms or those rules that have been created specifically for PPPs.

Given the fact that PPPs are long-term agreements involving substantial public resources, the significance of choosing the appropriate private partner is further emphasized. In this regard, it is essential for governments to establish a long-lasting partnership based on trust with the private partner, for which reason they must carefully assess the credentials and proposals of the bidders throughout the procurement process.

Compared to traditional public procurement, PPPs’ long-term and complex nature typically results in more drawn-out and challenging tendering processes. PPP tendering methods that are expensive and time consuming may eventually discourage competition by preventing potential bidders from putting together bids and taking part in the procurement process. This indicates that a reduction in

transaction costs, in conjunction with clarity, fairness, and openness of the procurement process, are crucial components to guaranteeing a level playing field for all prospective bidders. These important factors should be taken into consideration by procuring authorities when starting a PPP procurement procedure.

This *BID* report covers a wide range of topics that occur throughout a PPP procurement process, such as ease of access for bidders to information about the procurement process; the clarity and comprehensiveness of the procurement documents; the qualification of the bid evaluation committee members; the bid selection criteria used; the way governments deal with the cases of sole proposals; and restrictions on negotiations during the award phase. BID 2023 scores each economy's procurement framework based on accepted best practices that are enumerated in Box 3 to determine how well each of the examined economies is performing a PPP procurement process.





### Box 3: Procurement of PPPs: Good Practices Scored in Benchmarking Infrastructure Development 2023

Good practices that help to ensure fair competition, value for money, and transparency during a PPP procurement process include the following:

- The members of the bid evaluation committee are required to meet minimum qualifications.
- The procuring authority publishes the public procurement notice online.
- Foreign bidders have unrestricted access to participate in a PPP tender.
- The procuring authority grants at least 60 calendar days to potential bidders to submit their proposals.
- The procuring authority can choose among a range of competitive procurement methods to select the private partner based on the method's suitability.
- If direct (non-competitive) award is possible, there are well-defined circumstances in which the usage of such a procurement method is justified.
- The tender documents explain in detail the procurement procedure, providing the same information to all bidders.
- The tender documents specify the qualification requirements (or the pre-qualification requirements, when applicable).
- The qualification requirements (or the pre-qualification requirements, when applicable) are effectively regulated to ensure equal access for all qualified bidders to a PPP tendering process without limiting competition.
- Potential bidders can submit questions to clarify a public procurement notice and/or the request for proposals (RFP), and the answers are disclosed to all potential bidders.
- Potential bidders can suggest innovations to improve the tender documents or the procurement approach, including through the submission of variant bids, value engineering, and/or technologically neutral options.
- There is a set timeframe for the procuring authority to provide answers to the bidders' questions or requests for clarification.
- If any changes or modifications are made to the tender documents, the bid submission deadline is extended sufficiently to allow the potential bidders to adjust their bids.
- The procuring authority conducts a pre-bid conference to further inform the potential bidders, and clarifications provided during the conference are disclosed to all potential bidders.
- Bidders prepare and submit a financial model with their proposals or are asked to fill out the pro-forma financial model prepared by the procuring authority.
- The procuring authority evaluates the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents.
- Non-price criteria can be used for the bid evaluation, and such criteria are justified, objective, and quantifiable.
- The procuring authority provides a cost estimate or a value of a PPP contract in the tender documents.
- The procuring authority follows a specific procedure to guarantee value for money if only one proposal is submitted.
- The procuring authority publishes an award notice online.
- The procuring authority provides all bidders with the results of a PPP procurement process,

including the grounds for the selection of the winning proposal.

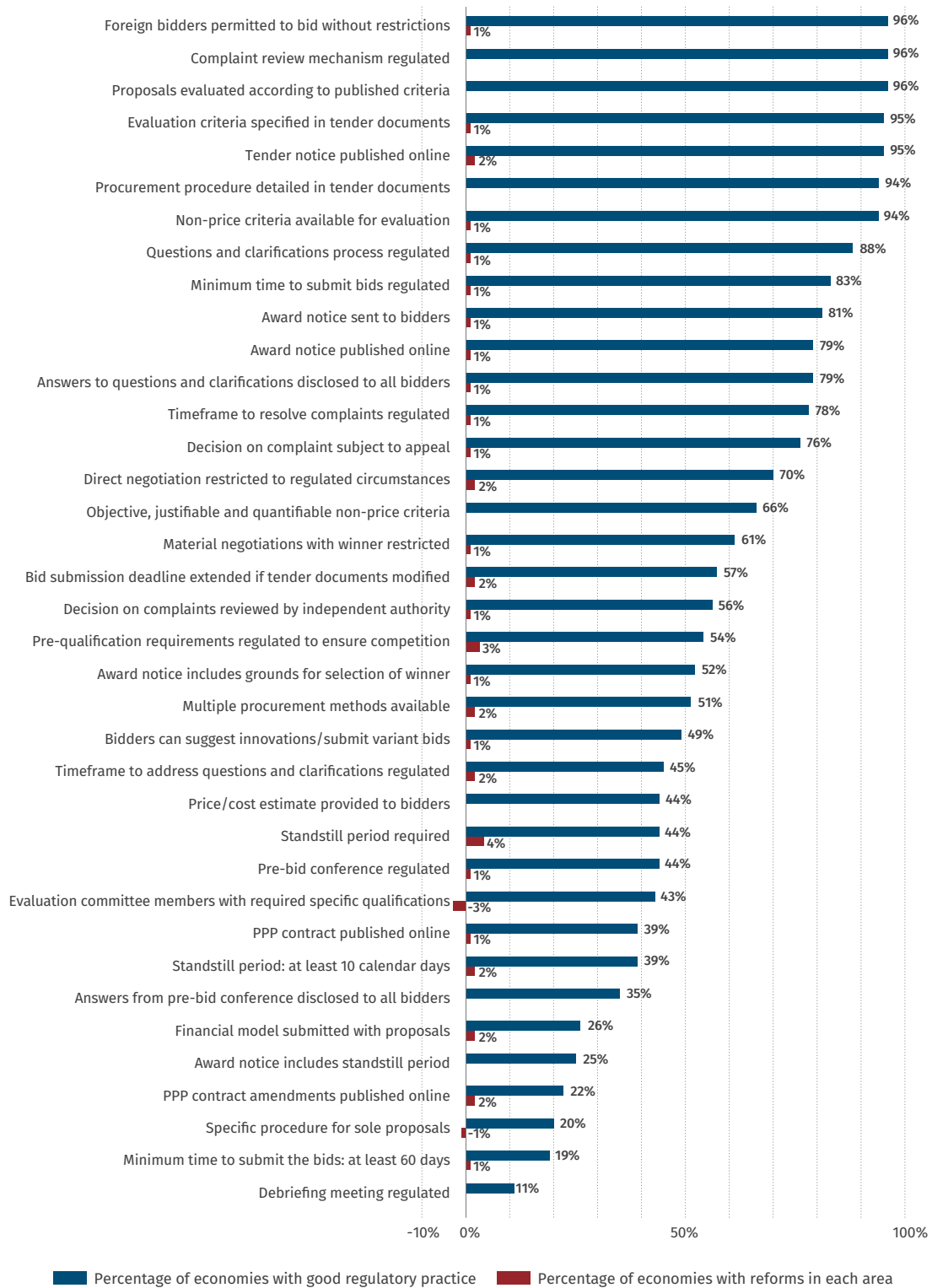
- The procuring authority provides the bidders with the option of holding a debriefing meeting to discuss why their bids were not selected.
- There is a standstill (or a pause) period of at least 10 calendar days after the notice of intent to award a contract is issued and before a contract is signed to allow unsuccessful bidders to challenge an award decision, and this period is specified in the RFP documents or in a notice of intent to award a contract.
- Any material negotiations between the selected bidder and the procuring authority after the award and before the signing of a PPP contract are restricted and regulated to ensure transparency.
- There is a specific complaint review mechanism for complaints related to the PPP procurement process.
- There is a set timeline in which decisions on complaints will be issued.
- The decision on complaints is subject to appeal.
- The original complaint or appeal is reviewed by an independent body (other than a procuring authority or the courts).
- The procuring authority publishes the signed PPP contract and its amendments online.

Figure 12 shows that some of the most fundamental criteria for a strong procurement process are widely used, such as having the evaluation criteria specified in tender documents and tender notices published online (95 percent). Since the last edition of this report, two more economies, the Dominican Republic and Ecuador, have passed reforms that state that the evaluation criteria will be specified in the tender documents.

Some of the more advanced procurement practices are still quite uncommon (Figure 12). Only 11 percent of the surveyed economies include the possibility of holding a debriefing meeting in their legislation. Other good international procurement practices also remained hardly adopted: online publication of contract amendments (22 percent) and having a specific procedure when only one bid is received (20 percent). Even more startling is the fact that only a relatively small percentage of economies (19 percent) meet the requirement of allowing at least 60 calendar days for the bidders to prepare and submit their bids, which could allow proper time for all bidders to prepare their proposals.

Even though procurement is a vast topic, few practice areas have experienced noticeable reforms between June 1, 2019, and June 1, 2022. Overall, the availability of multi-procurement methods only increased by 2 percent (Figure 12). However, the biggest reforms come from procurement methods, such as the institution of the availability of competitive dialogue, which has been introduced by 5 percent of the surveyed economies, namely Botswana, Brazil, Ghana, Senegal, Sudan, Ukraine, and Viet Nam. Many of these reforms come from newly implemented or recently updated PPP and procurement laws, which specify that a competitive dialogue can be used as a procurement method. Another noteworthy reform comes from four economies, Lao PDR, Qatar, Togo, and Viet Nam, signifying an increase of 3 percent (Figure 12) compared to the previous 2020 assessment, which introduced norms that mandate that the pre-qualification requirements be regulated to ensure competition—a good step towards more open and honest procurement processes.

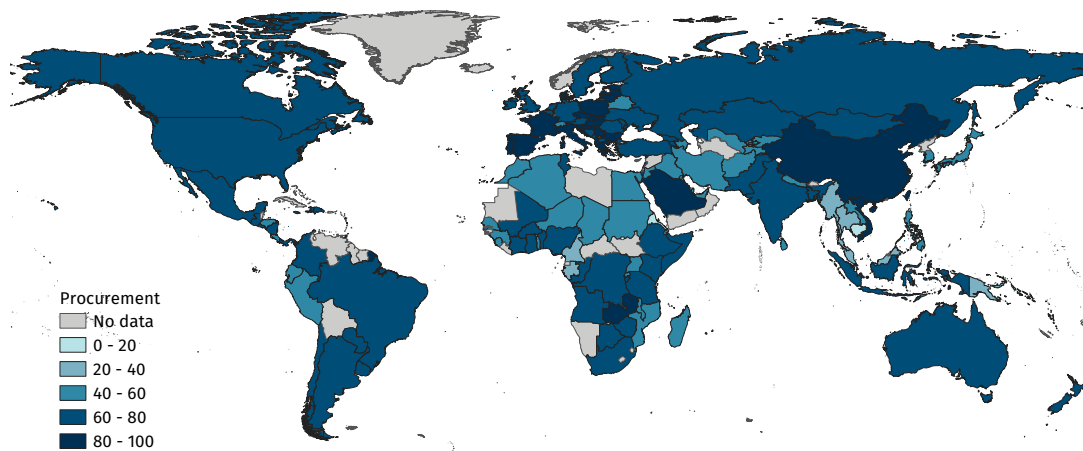
**Figure 12: Share of Economies That Adopt Good Procurement Practices by Scored Areas (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

BID 2023 data analyze regional and income group variations in the average score for the PPP procurement phase (Figures 13 and 14 ). When analyzing the scores by region, the OECD economies lead, with 77 points, followed by the economies in the ECA (70 points) and LAC (62 points) regions. Across the regions of OECD, ECA and LAC, there was an increase of two points compared to the 2020 assessment. A great discrepancy can be noticed between the best-performing region (77 points) and the worst-performing region (52 points). The EAP region has the lowest average score, with its average score continuing unaltered since the *BID 2020* report. When the data are disaggregated by income group, they reveal the following trend: the higher the income level of an economy, the higher its scores for the PPP procurement phase.

**Figure 13: Global Overview of PPP Procurement Scores (score 1-100, N=140)**



Source: Benchmarking Infrastructure Development 2023.

**Figure 14: PPP Procurement, Score by Region and Income Group (score 1–100, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia.

The analysis that follows focuses on two thematic areas among the various factors assessed during the PPP procurement phase: first, the method to choose a private partner by evaluating the availability of alternative competitive methods while also addressing the possibility of using direct (non-competitive) negotiations; and second, the existence of a standstill period.

## PPP Procurement Methods

Developing a sound procurement strategy is one of the most vital stages in managing a PPP process. The major objective of a procurement strategy is to provide the optimal method for choosing the best solution for a project, from both a technical and a value-for-money perspective, as well as the best qualified private partner to implement that solution. A fair, competitive, open, and effective procurement procedure is often required to achieve this goal. Nevertheless, the optimal procurement strategy to achieve these objectives may vary depending on the project characteristics, the context of the economy, and the nature and capacity of the government entities involved.<sup>43</sup> In order to properly address the varying needs of specific projects, norms and regulations should provide a sense of flexibility in terms of procurement methods available, to address the levels of complexity and sizes of different projects.

There can be restrictions on the availability of the various PPP procurement methods coming from a regulatory standpoint. In some economies, the existing laws and regulations prescribe a certain process (procurement method) to be followed to procure all PPP projects; however, different economies may offer more freedom in terms of the procurement method that must be used to procure certain projects. There are substantial benefits to keeping the flexibility to adapt procurement processes to meet the requirements of a specific project, even though having a prescriptive regulatory framework in relation to the available procurement methods may increase the transparency of the procurement process overall.<sup>44</sup>

BID 2023 collects data regarding the availability of the two most common procurement methods: open<sup>45</sup> and restricted<sup>46</sup> tendering, the latter referring to a bidding process with a pre-qualification stage. It also assesses the three more advanced/innovative ones: multi-stage tendering,<sup>47</sup> competitive dialogue,<sup>48</sup> and the best and final offer (BAFO)<sup>49</sup> process. The survey includes a residual category to capture other interesting non-standard methods. Additionally, the survey inquires whether these methods are available or must be used as a default in each economy.

Open and restricted tendering continue to be the two most common methods envisaged in procurement regulations, with the restricted method's absolute predominance over the other procedures. Figure 15 demonstrates that although 94 percent of all surveyed economies include a form of restricted tendering in their legislation, 28 percent set it as a default method.

The popularity of the restricted procedure is expected, considering the complexity of the majority of PPP arrangements, which necessitates the existence of a pre-qualification step. Restricted tendering is a default method mostly in economies in the bottom income group, because 56 percent of all the surveyed low-income economies set it as the default. This tendency could suggest that the issue of insufficiently qualified bidders is of particular concern in less developed economies, and that the requirement for a pre-qualification stage in those areas serves as a crucial backstopping mechanism against further low-quality bids. A few economies in the low-income and lower-middle-income groups have passed reforms since 2019, changing the requirement for restrictive tendering to be the default procurement method and making it simply available instead. This was the case for Egypt, Senegal, and Sudan, with the first two economies not only having changed restrictive tendering to available but also making open tendering the default procurement method.

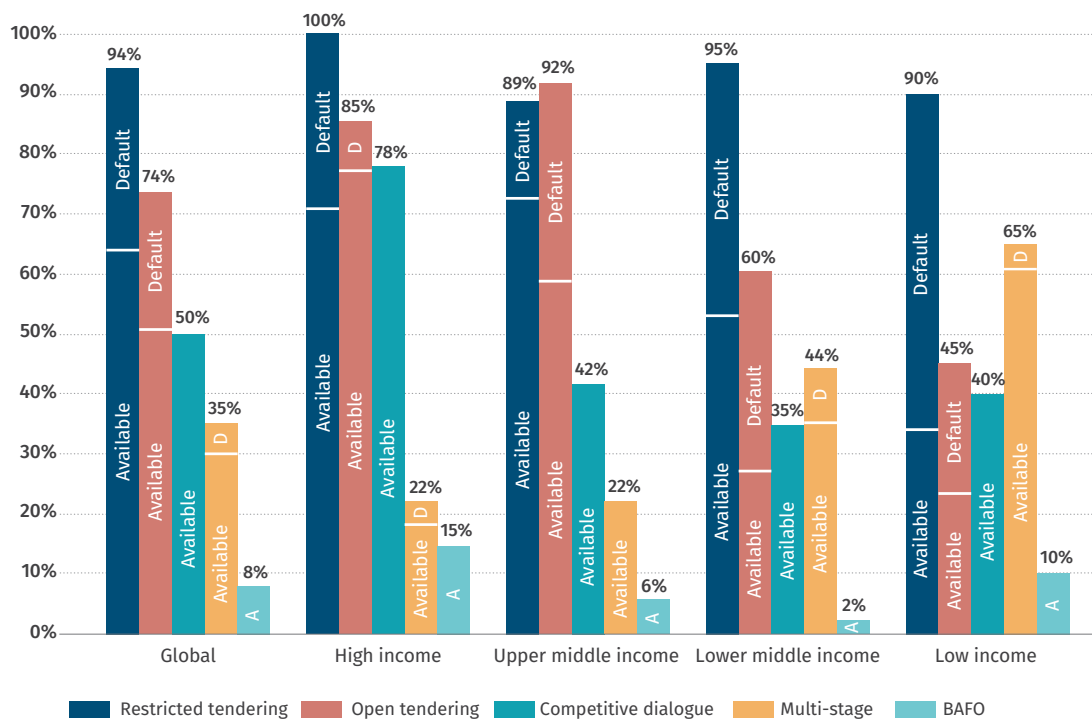
Meanwhile, 74 percent of the surveyed economies either make open tendering available (51 percent) or set it as the default method (23 percent). Good practice suggests that allowing procuring authorities a choice of procurement methods based on the requirements of a particular project would be preferred. Mandating an open tender by default may or may not be justified due to limited procurement authority capacity. It is worth noting that each country has its unique approach to the procurement process. Whereas some countries utilize a centralized procuring authority (e.g., PPP units), others delegate the process to respective government authorities. BID 2023 data show that 10 economies, namely Bangladesh, Chile, Guatemala, Honduras, Ireland, Kuwait, Lebanon, Malawi, Mongolia, and Peru include in their regulation norms that specifically address that the PPP unit will have as one of its main responsibilities the undertaking of the procurement process. And around the world, centralized PPP procuring authorities can have roles that extend beyond the procurement phase and even encompass contract management. In 24 economies (17 percent) it is established in their legal framework the possibility of participation of the members of the PPP contract management team in the PPP procurement process and/or vice versa. In some instances, the PPP unit members also participate in the team responsible for managing the contracts, ensuring that procurement and execution of PPPs are further aligned.

Advanced procurement methods are less prevalent overall, with adoption rates in the analyzed economies falling below 50 percent. Among such methods, the most popular one is a competitive dialogue, seen in 50 percent of the surveyed economies and having one of the most significant increases observed among the good practices of the procurement stage, with a 5 percent increase compared to the previous edition of the BID report. The more advanced procurement methods, which include competitive dialogue, multi-stage tendering, and BAFO, are used differently across income groups. Competitive dialogue is the leading option among the three in high- and upper-middle-income economies. The multi-stage procurement method remains the preferred option among the three in lower-middle-income and low-income economies (44 and 65 percent, respectively).





**Figure 15: PPP Competitive Procurement Methods Globally and by Income Group, Available Versus Default (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Although good procurement practices indicate that a PPP contract should be procured through a competitive selection process, there are valid reasons to use an alternative to this competitive process and, instead, directly negotiate with a private firm. These reasons are rather few, and thus, only when the proper safeguards for value for money, openness, accountability, and the public interest have been established and operationalized should direct negotiations be conducted.<sup>50</sup> Therefore, whenever a government permits direct negotiations in certain situations, the regulatory framework must explicitly state those situations and their conditions.

Since BID 2020, more advanced procurement methods have become available for PPP projects in certain economies. This type of reform took place, for example, in two economies that have introduced norms in their legislation to make BAFO available, namely Botswana and the United Arab Emirates. Reforms in other economies were more restrictive in nature, as was the case, for instance, in Saudi Arabia, where the newly adopted Private Sector Participation Law now requires using as the default a bidding process preceded by a pre-qualification stage to procure all PPP projects.

The BID 2023 data also show that the availability of direct negotiation as one of the possible procurement methods for PPPs is rather common in legal frameworks worldwide, with more than two-thirds (72 percent) of all surveyed economies allowing or envisaging direct negotiations in their legislation. This reveals an increase since the 2020 report, with six economies (Egypt, Kenya, the Kyrgyz Republic, Malawi, Panama, and Ukraine) introducing reforms that allow this procurement method. These economies also included in their reform restrictions to this procedure to allow it only in certain exceptional conditions and circumstances. This demonstrated that a majority (96



percent) of economies that envisage this method are dedicated to providing safeguards. Merely four economies use this method discretionarily, i.e., without providing specific circumstances in which its use is permitted: Cameroon, Sudan, Thailand, and Zimbabwe.

## Standstill Period

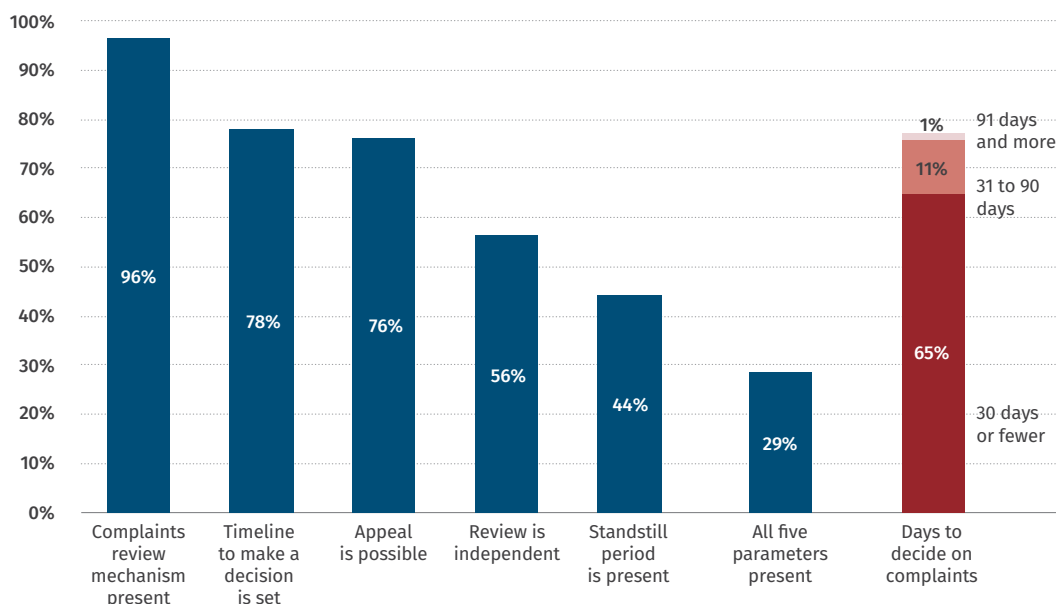
The standstill period is another valuable component in the procurement process. Once the intent to award to the winning bidder for a tender is announced, a reasonable period of time must elapse between the moment when unsuccessful bidders are notified about the intent to award the contract to the winning bidder and the time the contract is actually awarded. Such a step provides unsuccessful bidders a chance to contest a contract award before the PPP contract signing and execution phases get underway. This is particularly important in economies where an annulment of the PPP contract is not possible or where a complaint does not trigger a suspension of the procurement process.

A sensible standstill period provides the opportunity for the unsuccessful tenderer to examine the validity of the award decision, as well as any flaws that may have occurred during the evaluation process and ensure that a challenge to such an award decision will be effective. The standstill period also benefits the procuring authority by providing a clearer framework for bidders to challenge the award decision. Although the aggrieved bidders can always initiate a procurement challenge after the contract is awarded, a standstill period usually precludes the possibility of declaring the ineffectiveness down the line, preventing the most serious and costly post-contractual remedy.

Good practice indicates the need for a standstill (or a pause) period of at least 10 calendar days after a notice of intent to award a contract is issued and before a contract is signed. To optimize its effectiveness, the standstill period should be specified in the RFP documents or set out in the notice of intention of awarding a contract to inform about the timeline available to aggrieved bidders to challenge the decision of the procuring authority. A minimum of 10 days is a recognized standstill period, as reflected in judgments by the European Court of Justice, the World Trade Organization's Government Procurement Agreement, and other binding texts.

BID 2023 analyzes the availability of a standstill period as part of complaints review systems. The fundamental goal of a proper procurement complaint review system is to ensure that infractions and deliberate or accidental errors made during the procurement process can be addressed in order to enforce the practical execution of procurement processes. Complaint review systems are present in 96 percent (Figure 16) of economies. However, a standstill period is not automatically implied, because the data show that less than half (44 percent), or 62 out of the 135 economies that envisage a complaint review system in their regulations, concurrently provide for a standstill period.

**Figure 16: Main Characteristics of the Complaints Review Systems, Standstill Period, and Days to Decide on Complaints (percent, N=140)**

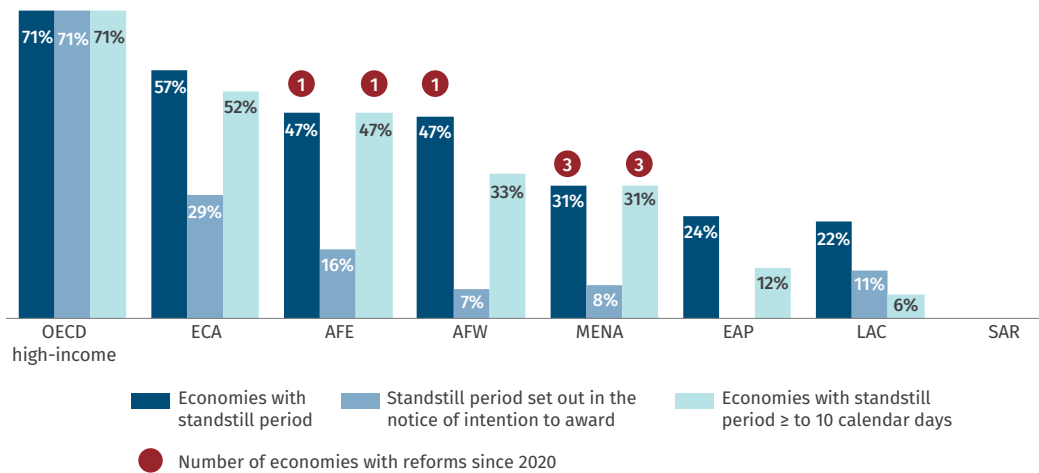


Source: Benchmarking Infrastructure Development 2023.

Several economies are making progress by addressing and regulating the standstill period. An example of this is Djibouti, which adopted in 2021 the Manual on PPPs Procedure, establishing that disputes relating to the PPP procedure must be brought before the PPP Commission within 15 calendar days, during which the PPP contract cannot be signed. Progress was also made in Lebanon, where a new Public Procurement Law applicable to PPPs explicitly mentions a standstill period. Saudi Arabia also introduced legislation that not only provided for a standstill period but also required that it be of at least 10 days. These economies make MENA the leading region in reforms for this category (as seen in Figure 17).

There is a great contrast in terms of regional comparison (Figure 17), which shows that although 71 percent of OECD high-income economies include the standstill period in the intention of the award and also provide that the period must be of at least 10 days, no economies in South Asia have the requirement for a standstill period. And no reforms have been passed since 2020 for either of these groups.

**Figure 17: Standstill Period (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia.

Though some economies are making progress by regulating the standstill period, more can still be accomplished, especially considering that none of the mentioned reforms in the MENA region, and not even other reformers, such as Togo and Sudan, have introduced the need to have the standstill period set out in the notice of intention to award in their new legislations, which could potentially hinder the effectiveness of such measures. This good practice continues to be largely overlooked by regulatory frameworks on a global scale, as Figure 17 shows.

## Contract Management

Adequate completion of the preparation and procurement phases is undoubtedly key to successful PPP projects. However, a signed PPP contract and accompanying financial closure only indicate that the project is ready to be implemented. In fact, it is the successful implementation phase that will determine whether the project delivers the expected value for money. Therefore, procuring authorities need to establish a sound PPP contract management system to oversee the implementation process effectively.

Indeed, PPPs are long-term projects, and their execution encompasses a range of construction and operations functions. Though smooth implementation is undoubtedly sought, long-term contracts like PPPs may inherently face changes in circumstances. Consequently, procuring authorities ought to create adequate mechanisms to address them, should they arise.

BID 2023 assesses the extent to which surveyed economies have addressed major elements of PPP contract management (Box 4). In doing so, it measures not only whether the regulatory frameworks and generally followed practices provide adequate oversight frameworks but also whether mechanisms exist that address changes in the structure of the private partner, renegotiations of the initial agreements, and dispute resolution. It also evaluates whether contract features, such as lenders' step-in rights<sup>51</sup> and contract termination, are clearly defined.

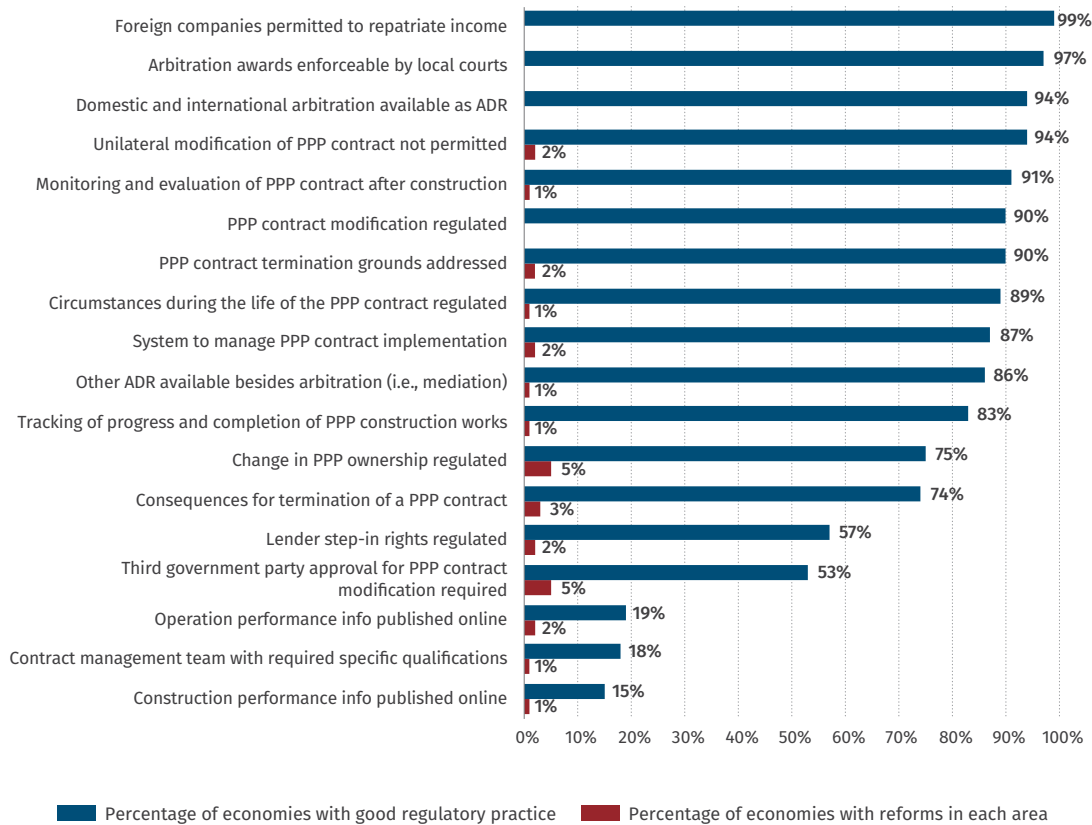
#### Box 4: PPP Contract Management: Good Practices Scored in Benchmarking Infrastructure Development 2023

The following is a list of good practices that help ensure successful implementation and delivery of PPP projects:

- The procuring (or contract management) authority has a system to manage the implementation of the PPP contract, including establishing a PPP contract management team, involving some contract management team members in the project starting at the procurement stage, and adopting PPP implementation manuals and risk mitigation mechanisms.
- The members of the PPP contract management team are required to meet minimum qualifications.
- The procuring (or contract management) authority establishes a system for tracking progress and completing construction works under the PPP contract, with relevant information made publicly available online.
- Monitoring and evaluation systems are in place to oversee the implementation of the PPP contract after the construction stage, with relevant information publicly available online.
- Foreign companies are permitted to repatriate income generated from PPP projects.
- Potential changes in the structure of the private partner are expressly regulated, requiring the replacing entity to be at least as qualified as the original private partner.
- Modification and renegotiation of the PPP contract are expressly regulated to reduce incentives to use these changes opportunistically by either the private partner or the procuring authority.
- A third-party government approval is required for contract modifications.
- The procuring (or contract management) authority cannot unilaterally modify a contract without third-party approval.
- Specific circumstances (force majeure, material adverse government action, change in the law, refinancing) that may arise during the life of the PPP contract are expressly regulated.
- Alternative dispute resolution mechanisms are available, including mediation, dispute resolution boards, and domestic and international arbitration.
- Arbitration awards are enforceable by local courts.
- Lenders are given step-in rights for cases when the private partner is at risk of default or if the PPP contract is under threat of termination for failure to meet service obligations.
- Grounds for termination of the PPP contract and its associated consequences are well defined.

More than 80 percent of the surveyed economies adopt more than half of good contract management practices, including enforcing arbitration awards, prohibiting unilateral contract amendments, regulating PPP contract modification, monitoring PPP contract implementation during and after construction, and identifying contract termination grounds. However, a far less significant number of economies have adopted good practices in the areas of disclosing contract management information to the public. Despite noting slight progress compared to BID 2020, the percentage is still low. Only 15 percent and 19 percent of the surveyed economies allow publishing information pertinent to project construction and operation performance, respectively. Figure 18 shows the percentage of economies that require compliance with each of the PPP contract management good practices.

**Figure 18: Share of Economies That Adopt Good Contract Management Practices by Scored Areas (percent, N=140)**



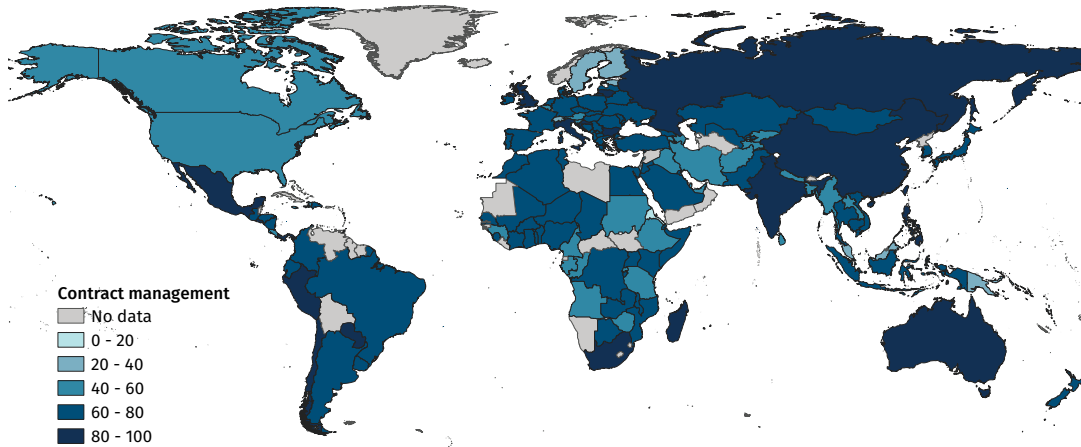
Source: Benchmarking Infrastructure Development 2023.  
 Note: ADR = alternative dispute resolution.

Since 2020, 36 economies (27 percent) have reinforced their contract management frameworks, improving their score in this thematic area. Overall, BID 2023 captures nine economies that have particularly seen considerable improvements of more than 12 points in their contract management scores, including Armenia, the Dominican Republic, Ecuador, Ghana, Lao PDR, Montenegro, Panama, Saudi Arabia, and Togo.<sup>52</sup> This illustrates a growing understanding of the importance of robust contract management systems.

Additionally, the data show that the number of economies adopting new requirements for third-party approval of PPP contract modification continues to increase (a 5 percent<sup>53</sup> increase captured in this edition in addition to the 6 percent increase presented in BID 2020). This favors better due diligence and prevents opportunistic behavior in renegotiation processes. The other largest improvement (5 percent) is seen in economies that have undergone reforms further regulating changes in PPP ownership.

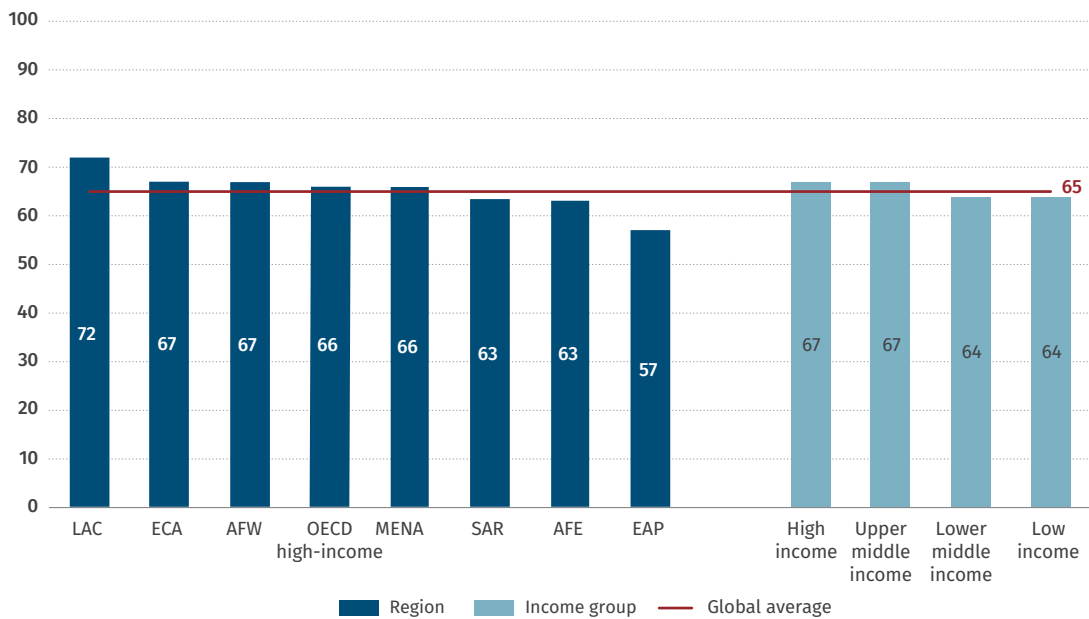


**Figure 19: Global Overview of PPP Contract Management Scores (score 1–100, N=140)**



Source: Benchmarking Infrastructure Development 2023.

**Figure 20: PPP Contract Management, Score by Region and Income Group (score 1–100, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia.

Globally, the BID 2023 data reveal slight regional variations and income group differences in the average score for PPP contract management (Figures 19 and 20).

In terms of regional variation, the LAC region stands out with the highest score (72), which is only 15 points ahead of the region with the lowest score, namely EAP (57). Interestingly, the MENA region reached the same average score as the OECD-high-income region, with an overall four-point increase since the 2020 edition. Intraregional variance, however, is still high in all regions in this thematic area. For example, scores within the EAP region are as low as 21 points (Tonga) and as high as 95 points (Philippines).

When the data are disaggregated by income level, BID 2023 also displays very similar scores across income groups, with three points difference between the average of the high-income group and the upper-middle-income group (67) on the one hand and the lower-middle-income region as well as the low-income region on the other hand (64). So, although good practices are spread across regions and income levels, disparities in how well PPP contract management is regulated among individual economies within those groups remain large (Figure 19).

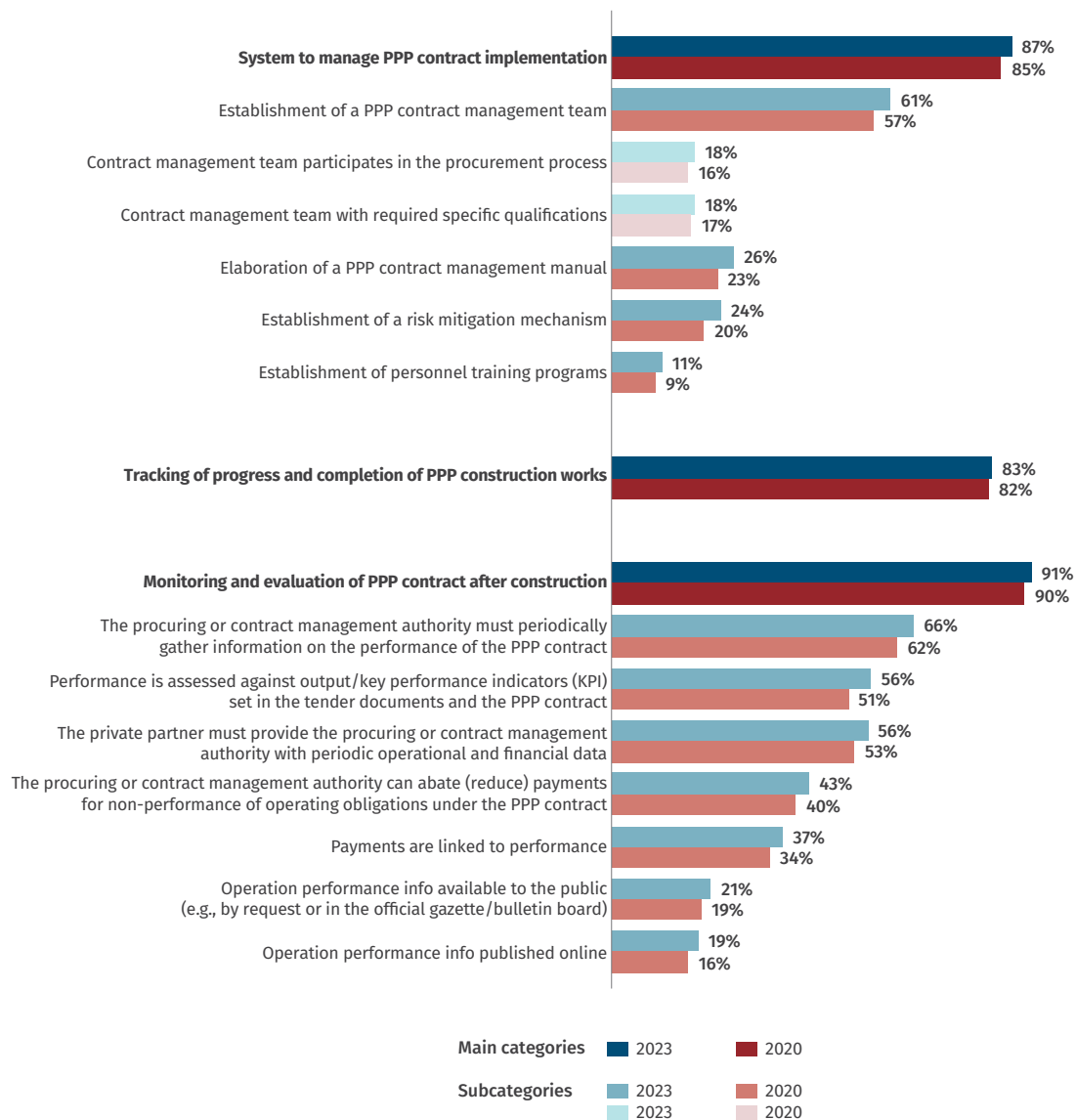
The next sections discuss additional findings from the analysis of the survey data, focusing on two key aspects of PPP contract management that were among the most affected by the reforms, namely: 1) oversight mechanisms (PPP contract management, construction, and implementation after construction) and 2) mechanisms addressing changes to the contract, whether due to renegotiation, unforeseen circumstances, or changes in the ownership of the private partner.

## Contract Management System: Oversight Mechanisms

Once the contract is signed, it is crucial to put in place sound and adequate oversight mechanisms to manage the PPP contract throughout the project implementation life cycle. This is typically achieved through establishing an overall contract management system, as well as monitoring and evaluation mechanisms to track the progress and completion of construction works and subsequently oversee the implementation of the PPP contract after construction. These mechanisms cover the life cycle of the PPP project and define the government party's responsibilities in managing the private party and ensuring the latter meets its contractual obligations.

The government party must equip itself with the necessary means to ensure the smooth implementation of the contract. Contract management systems entail primarily the designation of a dedicated member or team within the implementing agency, specifically in charge of contract management, defining their functions and responsibilities. They should also include elaborating contract management manuals, conducting personal training programs, and setting up risk mitigation structures. During construction, adequate tools need to be in place for monitoring, among other things, works and the completion of the infrastructure assets to the required standard. Oversight mechanisms after construction evaluate performance against contractual obligations, and structure communication between the government and the private parties.

**Figure 21: Share of Economies by Contract Management System Established and Tools Included, 2020 and 2023 (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

BID 2023 reveals a moderate increase in the growing percentage of economies that adopt oversight systems to manage the implementation of the PPP contract (87 percent, against 85 percent measured in 2020). Similarly, there was improvement in the tracking progress and completion of the PPP construction works mechanism (83 percent, against 82 percent in 2020).

The establishment of a contract management team is an example of good international practice for the government. Since BID 2020, five more economies, namely the Dominican Republic, Ecuador, Lao PDR, Panama, and Poland, have implemented laws and guidelines governing the creation of the team. Poland has taken significant steps to improve the PPP contract management system by introducing a number of new PPP Guidelines. According to Guideline IV,<sup>54</sup> the formation of the PPP project team is one of the key factors for the success of the PPP project. Moreover, this guideline

also governs the participation of the members of the PPP contract management team in the PPP procurement process; only 18 percent of economies make this type of requirement. Notably, the same portion of surveyed economies, 18 percent, have legislation in place requiring the PPP contract management team to meet the required detailed qualifications.

Whereas 87 percent of the surveyed economies have oversight systems to manage contract implementation, only 26 percent elaborate on PPP contract management manuals. However, several economies, including Ecuador, Indonesia, Poland, Saudi Arabia, and Tanzania, are making progress in this area by adopting a PPP contract management manual. For example, in Ecuador, the new PPP Regulation provides a strategy for contract management and a contract management manual.<sup>55</sup>

The establishment of risk mitigation mechanisms throughout the project life cycle is observed in 24 percent of economies, with five<sup>56</sup> having made progress in that area since the BID 2020 report. An example of this is Panama, which in 2022 adopted the Manual for the Evaluation, Assignment, and Assessment of Risks. The new manual provides guidelines for mitigating specific risk scenarios during construction, operation, and maintenance.<sup>57</sup>

Establishing personnel training programs remains the least regulated management tool, with only 11 percent of economies having legal provisions addressing this matter. Since BID 2020, there was an increase of 2 percent in this area, with only Poland and Tunisia implementing such requirements (Figure 21). It is also worth noting that only three economies, Australia, South Africa, and Sri Lanka, have established the regulatory framework that encompasses all the required mechanisms to cover the life cycle of the PPP management system.

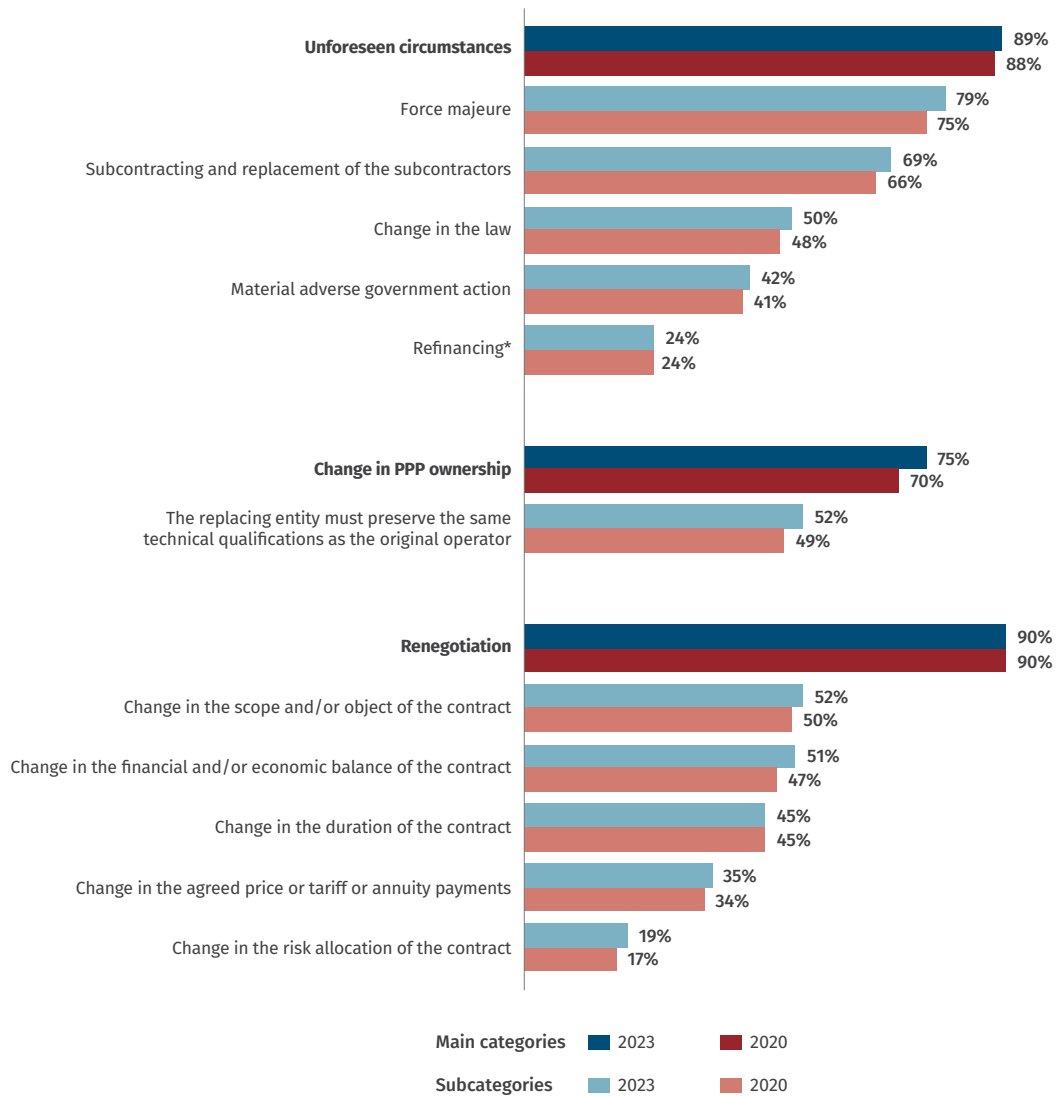
BID 2023 data show that monitoring and evaluation mechanisms are the most common good practice for overseeing PPP agreements after construction. These mechanisms are adopted by the overwhelming majority of surveyed economies (91 percent), with Ecuador and Lao PDR joining the list since BID 2020. Sixty-six percent of economies have regulations requiring the procuring authority to gather information about PPP performance periodically, with the new additions of Greece, Lao PDR, Saudi Arabia, Togo, and Ukraine. For example, in Greece, project implementation is systematically monitored during the construction and operational phases.<sup>58</sup> Angola, Panama, Senegal, and Ukraine have introduced new regulations and laws linking payment to performance, with the total economies adopting this good practice reaching 37 percent. For instance, in Angola, there is a duty to inspect reversible assets, with the public partner being able to withhold payments to the private partner in the amount necessary to repair any irregularities detected.<sup>59</sup> Although performance information should be made available online to further promote transparency in PPP contract execution and increase the accountability of all stakeholders, only 19 percent of the surveyed economies publish performance operation information online. Since BID 2020, limited progress has been registered in this area, with Angola, Panama, and Saudi Arabia adopting this requirement.

## Mechanisms Addressing Changes to the Contract

Properly procured PPP projects go through several stages and processes, including thorough preparation and multiple institutional approvals. These safeguards cannot, however, foresee all potential circumstances that may take place throughout the life of a long-term PPP contract, challenging the fulfillment of initial contractual obligations and impacting the smooth implementation of the PPP project. Consequently, a PPP contract needs to establish mechanisms to deal with changes and the subsequent potential need for renegotiation or modification of certain elements of the contract.

Changes affecting the PPP contract can be the result of 1) the occurrence of unforeseen circumstances; 2) a need to replace the initial private party or, in other words, changes to the ownership structure; and 3) the renegotiation of some key aspects of a contract. These changes should be expressly regulated to maintain a strong contract management system. Figure 22 shows the share of economies that regulate different sources, and details of changes to the PPP contract.

**Figure 22: Share of Economies by Contract Changes Regulations, 2020 and 2023 (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

\* The bars do not match due to rounding. They represent 33 economies in 2020 and 34 in 2023.

## Unforeseen circumstances

Regulation of unforeseen circumstances is necessary to ensure the flexibility and predictability of the inherently long-term PPP contract. Economies are encouraged to adopt express provisions to regulate different circumstances during the life of a contract, such as force majeure, material adverse government action, and law changes. This is particularly important in the face of global disasters like pandemics. Force majeure and other similar relief mechanisms in PPP contracts, such as material adverse government action and change in law, should be specified by law or standardized provisions in PPP regulatory frameworks to allow for the adjustment of timelines, performance parameters, and the suspension of penalties for non-performance caused by disasters.

Four percent of the surveyed economies have regulatory frameworks now expressly addressing force majeure (Figure 22). Since 2020, six economies, namely Ecuador, Ghana, Guinea, Poland, Qatar, and Togo, require force majeure clauses to be stated in the PPP contract. Subcontracting and replacing subcontractors are also expressly regulated in 69 percent of the surveyed economies, as opposed to 66 percent in 2020 (Figure 22).

## Changes to the ownership structure of the PPP

PPPs are awarded based on the private party's specific qualifications, which prohibits their transfer in most legal systems without the approval of the procuring authorities. These constraints are often imposed to guarantee the qualifications of infrastructure operators or public service providers. Therefore, changes in ownership structure must be regulated with the condition that the replacing entity must preserve the same technical qualifications as the original operator.

The data show a slight increase in economies regulating changes in ownership structure, going from 70 percent in 2020 to 75 percent in 2023 (Figure 22). More precisely, seven economies have introduced new laws and regulations regulating changes in the ownership structure of the private party. This is the case in Armenia, the Dominican Republic, Ghana, Jordan, Qatar, Saudi Arabia, and Senegal.

## Renegotiation

The renegotiation of PPP contracts is regulated to ensure that contract revisions are not opportunistic. Allowing renegotiation is a necessity due to the long-term nature of PPP contracts. It opens, however, the door to opportunistic behaviors if it is not well regulated. Opportunism can, for instance, take the form of unjustified modification of the risk allocation framework, effectively altering the duties of the contractual parties, which would defeat the purpose of the competitive procurement process.

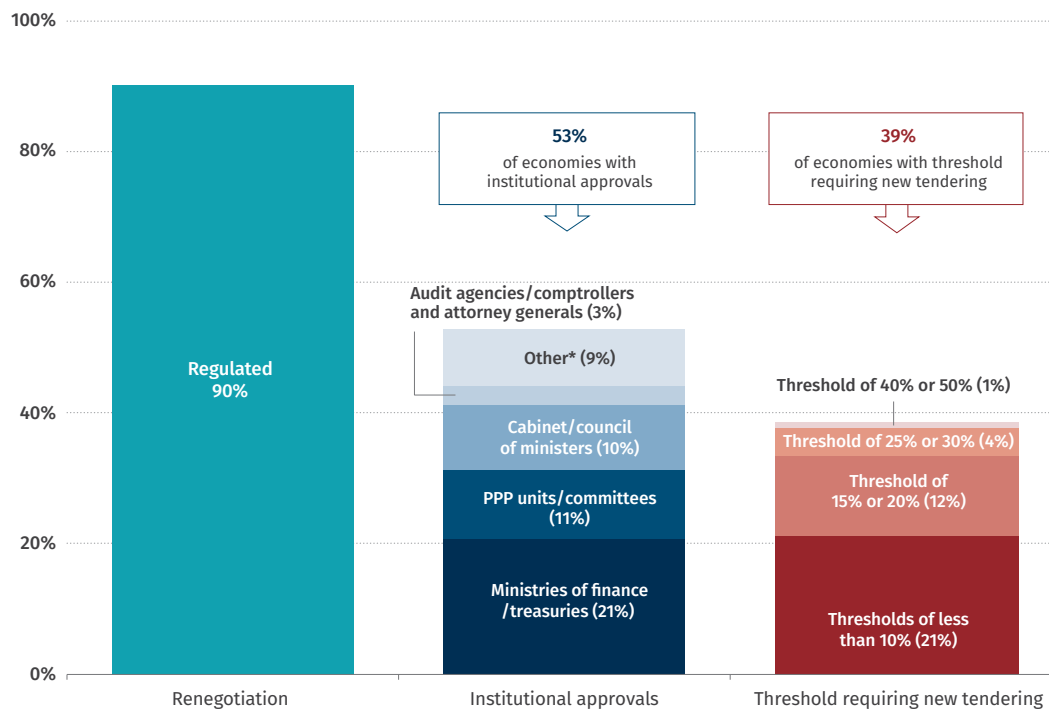
BID 2023 assesses how renegotiations are regulated and whether those regulations include requirements for third-party approvals, and limitations to modifications of the scope of the contract, its risk allocation, and the financial and/or economic balance, duration, and agreed price or tariff or annuity payments.

Overall, renegotiation is expressly regulated by most surveyed economies (90 percent). Other more specific regulatory limitations are much less common: for example, a critical PPP issue like the changes in risk allocation is explicitly addressed in only 19 percent of the surveyed economies in the context of renegotiation (a 2 percent increase since 2020).



Since BID 2020, the data show an increasing level of due diligence requiring third-party approval for renegotiations, reaching 53 percent in 2023 (Figure 23). The most common third-party agencies that approve renegotiations are the MoFs or treasuries, the PPP units or committees, and the cabinet or council of ministers. This institutional approval by government agencies other than the procuring authority provides more impartial oversight over renegotiations of PPP contracts. Indeed, seven economies have updated their legal frameworks since 2020 to include this essential feature: Armenia, the Dominican Republic, Guinea, Montenegro, Saudi Arabia, Togo, and Uzbekistan.

**Figure 23: Renegotiation Safeguards Across Economies (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Note: \*Entities in the "Other" category include the National Directorate of Public Procurement Control, like Guinea, Nigeria, and Togo.

Finally, contracting entities in the different economies have been regularly instructed to keep contract amendments within certain limits. When renegotiations exceed these thresholds, a new tendering process is necessary to support competition. The objective is to ensure value for money for additional work and to give all bidders a level playing field. Thresholds are often established to ensure changes do not affect the overall object or scope of a contract.

Since the 2020 edition, 38 percent (54 economies) have required a threshold to limit contract amendments (Figure 23). Though there was no increase in the number of economies, the Philippines has introduced for the first time a limit beyond which contract renegotiation is not possible without a new tendering process.<sup>60</sup> Saudi Arabia has adopted its first PPP-specific law that regulates renegotiations but without setting any threshold constraining renegotiation.

## Unsolicited Proposals

An unsolicited proposal (USP) is an alternative approach to the traditional method of initiating a project in which a private sector entity takes the initiative to submit a proposal to the government to develop a specific infrastructure project without receiving an explicit request or invitation from the government. The process typically involves the private entity establishing the basic project specifications at its own expense. Once the proposal is prepared, the private entity approaches the relevant government entity or agency with the proposal for approval.

USPs can bring valuable knowledge and new ideas from the private sector and help the public sector promote innovation in PPP projects. However, USPs also have raised serious concerns to public sector practitioners about some challenges inherent in their process, notably diverting public resources away from governments' strategic plans and priorities, failing to attract competition, and, ultimately, opening the door to corruption.<sup>61</sup> Although USPs are not intrinsically corrupt, they can become vulnerable to corruption if they are not managed transparently and fairly.

Allowing USPs can permit private entities to lead in identifying investment needs that typically require significant monetary resources. To leverage USPs effectively, governments can encourage private entities to propose innovative ideas for necessary infrastructure projects while aligning them with the public interest and government priorities and achieving the best value for money. A good policy to manage USPs can help ensure transparency and predictability and protect the public interest. The best method for governments to maximize USPs' benefits while minimizing the associated risks would be to implement a set of well-established best practices. Whenever a procuring authority receives a USP, it must first determine whether or not the project is a potential match for its PPP program. If the authority adopts the USP, the next crucial stage is defining the project's expected key objectives. The responsible government authority should assess the merits of the submitted USP: whether there is demand for the proposed project, whether the project is aligned with national infrastructure priorities and meets a social and economic need, and whether the USP is not already a part of a government PPP pipeline.<sup>62</sup> The authority cannot initiate a transparent and competitive procurement procedure in which the USP proponent and other bidders are invited to participate until the USP has been fully justified. Box 5 presents a list of good practices concerning USPs.

### Box 5: Unsolicited Proposals of PPPs: Good Practices Scored in Benchmarking Infrastructure Development 2023

The following are among the good practices that help ensure transparency and competition for PPP projects originated as unsolicited proposals:

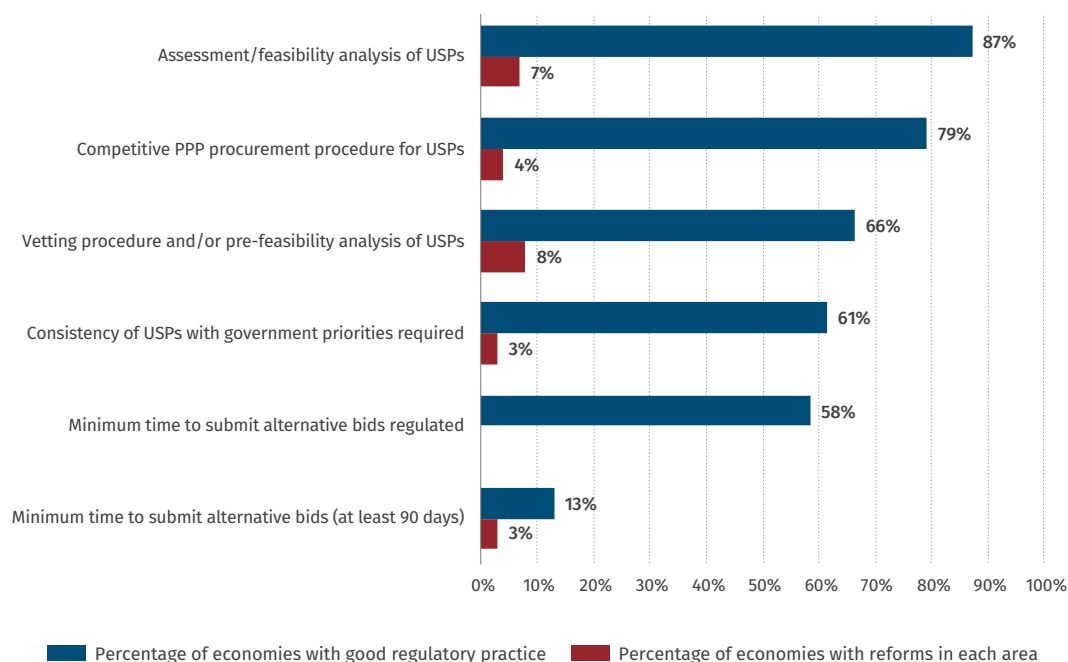
- The procuring authority assesses the merits of the USP and ensures that it aligns with the government's investment priorities.
- There is a vetting procedure and/or a pre-feasibility analysis before moving forward and fully assessing the unsolicited proposal.
- If the USP is justified, the procuring authority initiates a competitive procurement procedure to select the private partner.
- The procuring authority grants all potential bidders (besides the proponent) a minimum time to prepare alternative proposals.
- The time to prepare alternative proposals is at least 90 days.

The data collected for BID 2023 indicate that a vast majority (87 percent) of 101 economies where USPs are taking place, with or without specific regulation, require procuring authorities to assess the USPs submitted by the private sector to ensure their viability. Feasibility assessment is the most followed good practice (Figure 24). Other related good practices are significantly less prevalent, with only 61 percent of economies ensuring more direct consistency of USPs with other government investment priorities. The data reveal a slight increase in economies that have adopted an additional vetting procedure or pre-feasibility analysis to avoid having to incur the cost of a full assessment for all proposals received from the private sector, reaching 66 percent in BID 2023 (Figure 24). Ghana is one of 10<sup>63</sup> economies that have recently adopted regulations where the PPP Act requires the procuring authority to evaluate the project’s feasibility study report.<sup>64</sup>

The BID 2023 data show that the second most common good practice (79 percent) followed by economies that use USPs is the requirement to conduct a competitive PPP procurement procedure to choose the private partner that will ultimately develop a project (Figure 24). This is particularly important to allow other potential partners to outbid the initial proponent, ensuring value for money on the final project delivery. Although there have been no significant reforms in this area since the last report, Viet Nam has introduced a new PPP law, which requires procuring USPs under open bidding or competitive negotiations.<sup>65</sup>

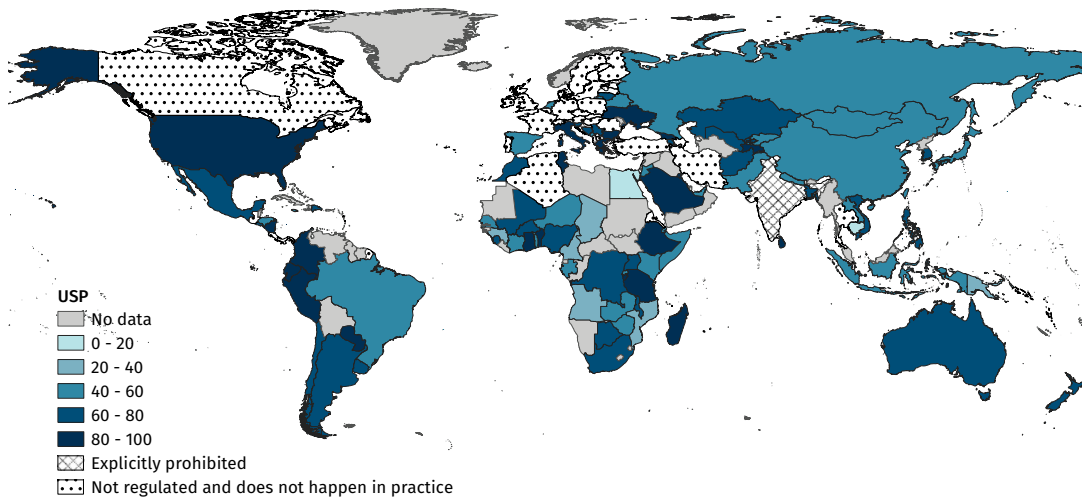
On the contrary, there is a slight decrease (58 percent, compared with 61 percent in BID 2020) in economies that require by law a minimum period during which the prospective bidders may prepare their proposals. The reduction in score is attributed to the fact that some economies have banned USPs. For instance, Albania recently passed a new amendment to the PPP law that prohibits the economy from accepting unsolicited bids for PPPs and concessions projects involving road infrastructure.<sup>66</sup> Also, it is noteworthy that only 13 percent of the surveyed economies have legislation requiring prospective bidders to submit alternative bids within at least 90 days.

**Figure 24: Share of Economies That Adopt Good USP Practices, by Scored Areas (percent, N=101)**



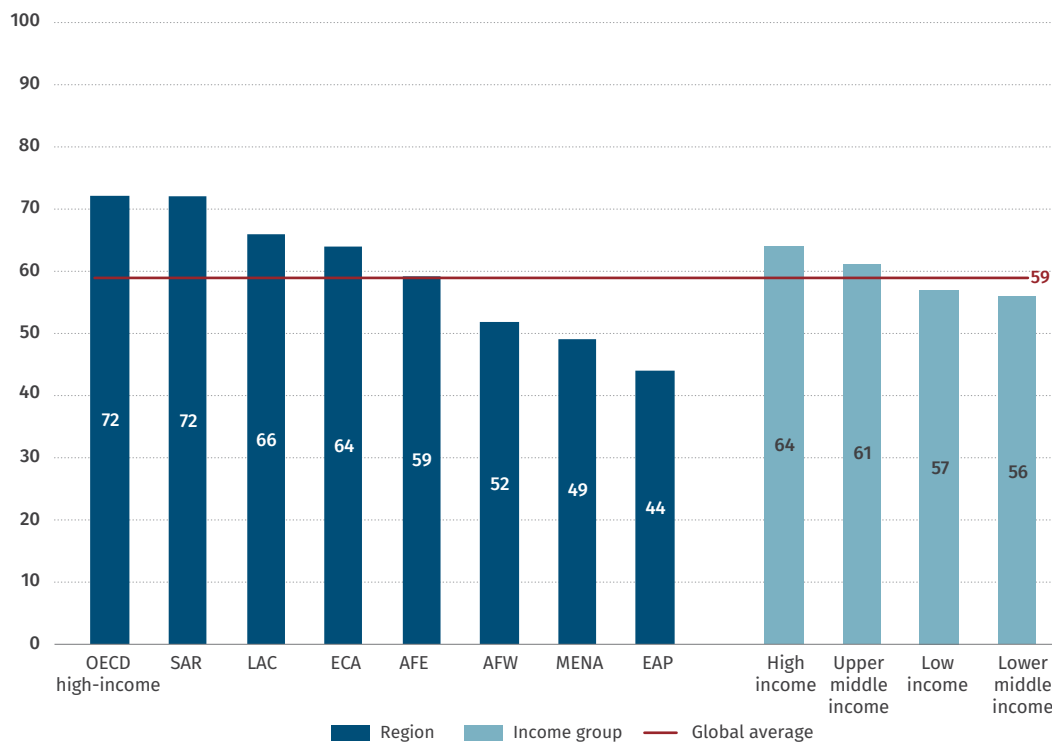
Source: Benchmarking Infrastructure Development 2023.

Figure 25: Global Overview of USP Areas (score 1-100, N=140)



Source: Benchmarking Infrastructure Development 2023.

Figure 26: USPs, Score by Region and Income Group (score 1-100, N=101)



Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia.

Globally, BID 2023 data reveal regional and income group differences in the average score for USPs (Figures 25 and 26). South Asia and OECD-high-income regions stand out from others with higher scores. The EAP region remains with the lowest average score, with an only 3 percent increase from BID 2020, whereas the LAC region exhibits the highest variation in scores among economies within the region. Some economies in the region, such as Panama, do not regulate any of the specified areas related to USPs, scoring zero points, and others, for example, Peru, regulate all of them, earning 100 points according to the benchmarks used in the initiative. Disaggregating the data by income level reveals a pattern: the higher the income group level, the higher the average scores on USPs. This suggests that higher-income economies tend to have more comprehensive and robust regulatory frameworks for governing USPs.

The following subsections provide an overview of the various regulatory approaches economies adopt to govern USPs. It will also provide a more detailed discussion of how the surveyed economies regulate the procedure for selecting the final private partner to carry out projects that originated as USPs.

## Regulatory Framework for USPs

The regulatory approach for USPs differs among the 140 economies surveyed in BID 2023. The most extreme solution is banning USPs within the regulatory framework altogether, which is uncommon. Albania, Croatia, Lebanon, and India, are the only economies that explicitly prohibit USPs in their regulatory frameworks.

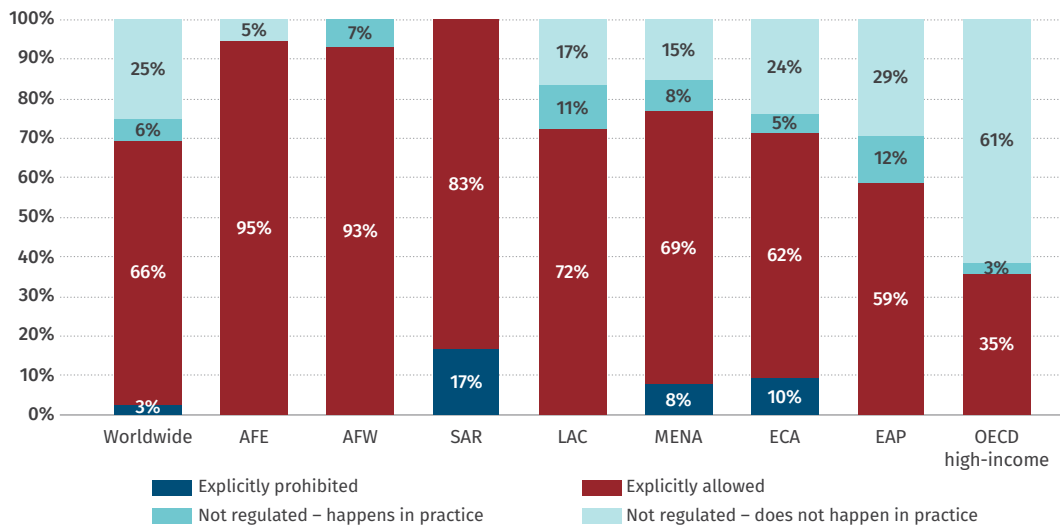
At the other end of the spectrum, USPs are expressly governed by the legal framework in 92 economies (66 percent) covered by the initiative. There have been nine<sup>67</sup> economies that have developed formal regulatory frameworks for USPs since the last report. Figure 27 shows the breakdown of approaches to USPs worldwide and by region.

The Eastern and Southern Africa (AFE) region has the highest percentage of economies where USPs are explicitly allowed (95 percent), and since BID 2020, Angola, Somalia, and Sudan joined that group by enacting legislation that regulates USPs. Another region with a high prevalence of express regulation (93 percent with no change since the last report) is Western and Central Africa (AFW).

All five South Asian economies (excluding India, which outlaws USPs) explicitly regulate USPs. In the OECD-high-income economies, however, express regulation of USPs is uncommon (35 percent). Greece is the only economy in the OECD region with a new law that implements USPs for infrastructure projects as an alternative to the traditional method.<sup>68</sup> Reforms were adopted in the MENA region between June 2019 and June 2022, with Qatar<sup>69</sup> and Egypt<sup>70</sup> introducing their first laws governing USPs. The regulatory framework in the LAC region has remained unchanged (72 percent) since BID 2020.

The lack of a legislative framework that governs USPs may be interpreted as an implied prohibition. This appears to be the case in several economies where, according to contributors, USPs are not regulated and do not happen in practice (25 percent of the world's economies surveyed). However, in 6 percent of the surveyed economies, where the regulatory framework does not explicitly cover USPs, survey respondents reported that these types of private sector proposals for PPP projects do nonetheless happen in practice. This can be a problematic approach, because lacking a clear framework for addressing USPs may result in accepting proposals that are not fully in the public interest.

**Figure 27: USP Regulatory Framework, by Region (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia. USP = unsolicited proposal.

## Competitive Bidding and Minimum Time Limit

A competitive bidding method is advantageous because it increases the likelihood of gaining better value for money from USP projects. When dealing with USPs, having a clear and transparent procedure improves transparency and helps governments mitigate pressure from the private sector and special interest groups to accept a proposal. A project structured through a competitive and transparent process is more likely to maximize value for money because the procedure allows the procuring authority to select the best proposal submitted by the most suitable bidder to execute the project.<sup>71</sup>

The BID 2023 data show that 21 percent of the surveyed economies do not require a competitive procurement process for USPs. The original proponent is more likely to become the private partner in these instances. This includes most economies where USPs happen in practice but are not regulated by law, which is a logical consequence of the regulatory void. According to the report's contributors, the only economy where USPs happen in practice without a specific law is the Netherlands. However, a competitive procedure will still be required due to the stricter procurement framework applicable in European Union (EU) economies.

In most economies where USPs are subject to regulation, the framework makes it very explicit that there must be an opportunity for alternative potential bidders to participate in the process. This is required for a fair process for all parties involved. Armenia, Greece, Lao PDR, Somalia, Pakistan, and Viet Nam are the six economies that have enacted laws specifically addressing the need for a competitive procurement procedure. For example, the new PPP law in Viet Nam stipulates that the proposed private sector project shall be procured through either open bidding or competitive negotiation.<sup>72</sup>





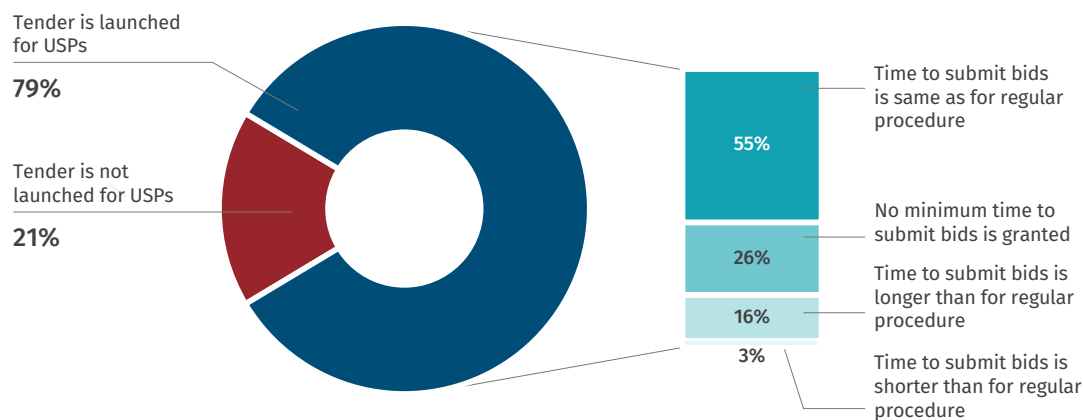
Giving sufficient time to prepare bids is a well-established good practice for government-initiated PPPs. Even a competitive and transparent bidding process for USPs may not be sufficient if private entities (other than the original USP proponent) are not given sufficient time to prepare their proposals. The complexity of PPPs always necessitates high levels of due diligence to prepare quality proposals, but in the case of USPs, this is even more crucial. Providing a short period of time for alternative bidders to submit their proposals reduces the level of competition because the original bidder has an inherent advantage over the others.

To avoid insufficient time to prepare alternative proposals, procuring authorities should provide at least the same amount of time for USPs as in the bidding process for a government-originated PPP project. Ideally, authorities should consider USPs' unique characteristics and grant an extended timeframe to prepare alternative proposals. Figure 28 below provides a breakdown of the surveyed economies, comparing the minimum time regulated to bid for USPs and the minimum time regulated in the case of government-originated proposals. The data reveal that in 21 percent of the economies that require a competitive procedure, there is no regulatory provision regarding the minimum time to be granted to bidders at all, and thus, this remains a matter to be regulated on an ad hoc basis by the procuring authorities.

The legal framework of many economies defines specific timelines for procuring USPs. Fifty-five percent of the surveyed economies (such as Côte d'Ivoire, the Dominican Republic, and Tunisia) require the same time as government-originated proposals. Typically, this is the case when the USP requirements of a competitive bid merely refer to the general procurement regulations. Different times would occur when the USP regulation specifically addresses this issue. In 26 percent of the economies, there is no defined mandatory minimum timeframe within which bids must be submitted. Chile has now joined that group by enacting a new regulation<sup>73</sup> that repeals the legal basis of the minimum time amount required to prepare USP proposals, and as a result, it is now consistent with government-originating proposals, for which there is no legally required time for the submission of bids. Only 16 percent of the surveyed economies provided more time for procuring when the projects originated as USPs. This includes economies such as Colombia (180 days instead of 14 days), Saudi Arabia (84 days instead of 60 days), and now Greece, which has enacted a new law that governs PPPs, and has established a time window to submit a USP that is longer than that

for government-originated proposals (100 days instead of 30 days).<sup>74</sup> Only two economies have established a shorter regulatory minimum time for USPs than for government-initiated proposals: Brazil (100 days for regular procedure versus 45 days for USP) and Uruguay (90 days for regular procedure versus 46 days for USP).

**Figure 28: Comparison of the Minimum Time to Submit Bids, Regular Versus USP Procedure (percent, N=101)**



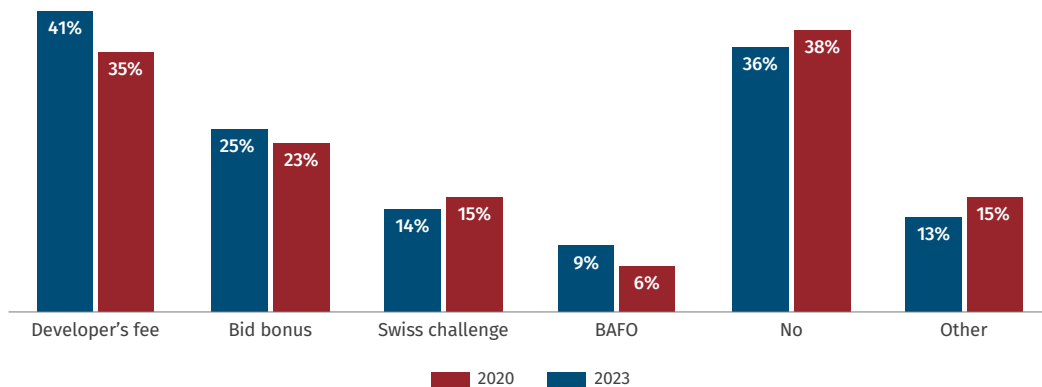
Source: Benchmarking Infrastructure Development 2023.

## Incentive (Compensation) Mechanisms

BID 2023 also analyzes the compensatory mechanism for payment of project development costs to the original proponent. Governments choosing to competitively tender USPs may reward USP proponents through incentive mechanisms. A reimbursement mechanism in place encourages the private sector to approach the government with unadvertised proposals. For example, if proponents know they will be reimbursed for preparing the proposal, which might be costly, they are more likely to submit one. However, firms may submit frivolous proposals if the reimbursement fees are very generous. In terms of USPs in general, there is still no clear consensus on whether compensating mechanisms should be used at all. As a result, the data collected for BID 2023 are only utilized to advance global understanding of these instruments without scoring their adoption.

The developer's fee (reimbursing the original proponent for the project development cost) remains the most common incentive mechanism used, in 41 percent of economies. Since BID 2020, seven economies (Angola, Armenia, Ghana, Greece, Lao PDR, Nepal, and Viet Nam) have implemented new legislation to reimburse the original proponent. For example, Angola's new PPP regulation clarifies that the winner of the competition is responsible for reimbursing the costs incurred in preparing the studies.<sup>75</sup> The second most used mechanism is the bid bonus, which is used in 25 percent of economies, whereas the Swiss challenge and BAFO are less commonly used mechanisms. Furthermore, Lao PDR<sup>76</sup> reformed the PPP regulatory framework and, as a result, now has three compensatory mechanisms in place, lacking only the Swiss challenge. None of the studied economies has the regulatory framework that governs all four incentive mechanisms. However, it should be noted that in 36 percent of the surveyed economies, the government uses a no-incentive approach (Figure 29).

**Figure 29: Mechanisms to Compensate the Original Proponent of the USP (percent, N=101)**



Source: Benchmarking Infrastructure Development 2023.

## Disclosure of Information Throughout PPP Life Cycle

Infrastructure PPP project information should be disclosed throughout the entire life cycle to maximize efficiency gains and ensure optimal socioeconomic results. Publicly accessible information improves predictability, raises public support for PPP initiatives, lowers the risk of corruption, and ensures that private investments align with public interests.

Many economies include in their legislation general principles of public disclosure of information. Even more important are the specific commitments to ensure such principles are followed. Having specific provisions that deal with public disclosure is a step in the right direction to guaranteeing that the norm will go beyond the mere text of the law and become regular practice.

Disclosure of information is usually done in one of two ways: a proactive or reactive method. The proactive form entails automatic public disclosure by the responsible government entities, whereas reactive disclosure requires only information given upon specific request. Proactive disclosure is sometimes dismissed because of the expenses involved in information gathering, processing, and dissemination—which is particularly true for online disclosure. In several economies, the lack of enforcement is another factor contributing to the difficulty in implementing proactive disclosure. However, when considering the length and high value of PPP projects, setting up and maintaining online systems for public disclosure may be worth the cost. For this reason, more and more experts advocate for the use of proactive online disclosure to attain greater transparency in PPPs, even though safeguards for sensitive data have yet to be developed.

Although at present there is more understanding of the advantages of public disclosure, such disclosure remains limited. This causes a significant knowledge gap for many stakeholders. Different economies face different barriers to public disclosure, ranging from technical challenges to a lack of political will. Even if the information is public, it frequently comes in the form of long, complex documents that are difficult to use.

BID 2023 gathered data regarding global public disclosure practices at different PPP project life-cycle phases. Box 6 indicates the list of good disclosure of information practices scored by this initiative.

#### **Box 6: Disclosure of Information Throughout the PPP Life Cycle: Good Practices Scored in Benchmarking Infrastructure Development 2023**

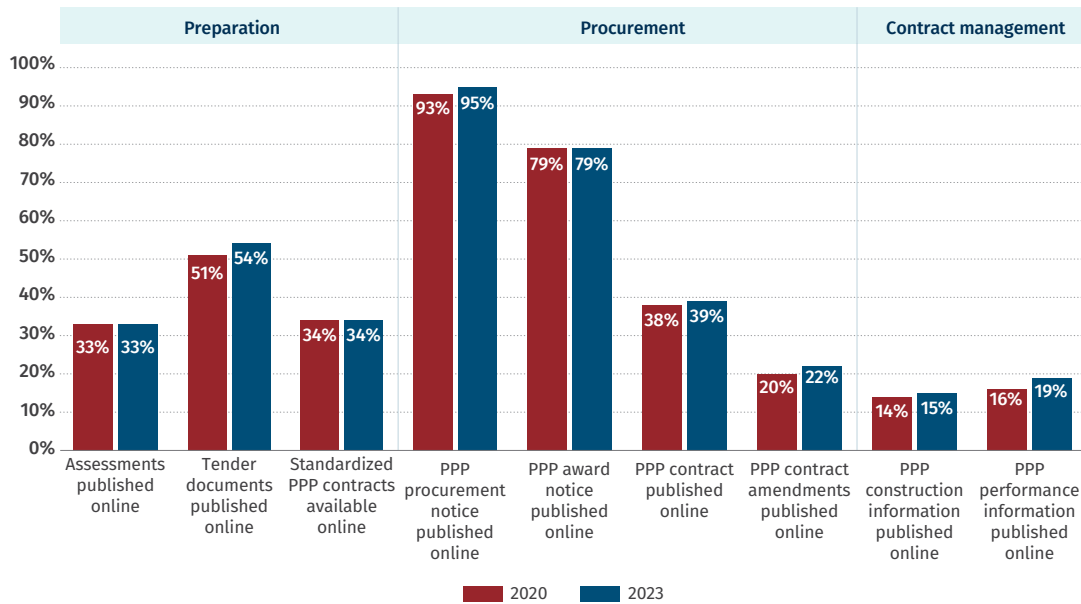
The following are among the good disclosure of information practices that help ensure openness and transparency throughout the life cycle of PPPs:

- **Preparation**
  - › Standardized PPP contract and/or transactional documents are available.
  - › PPP assessments are available online.
  - › Tender documents are available online.
- **Procurement**
  - › Procurement notice is available online.
  - › Award notice is available online.
  - › Contract is available online.
  - › Contract amendments are available online.
- **Contract management**
  - › Information on construction progress is available online.
  - › Information on project performance is available online.

Figure 30 illustrates a modest improvement in the nine areas of best practices for information disclosure between BID 2020 and BID 2023. The online publication of the PPP procurement notice and the PPP award notice are the areas with the highest number of economies adopting good international practices. Ninety-five percent of economies have requirements for online publication of the PPP procurement notice, which marks the start of the formal procurement process. The slight increase from 93 percent in 2020 is due to three economies (Chad, Ecuador, and Togo) introducing reforms after June 2019. Although some of these economies require advertisement by traditional media, such as newspapers, with the advent and advancements of digital media, online publication has become more and more necessary, because this form of electronic media has become more accessible than traditional newspapers. This is true not only for public procurement notices but for all practices related to disclosure of information.

The availability of data and records that track each procurement action is necessary for analyzing performance implementation. This information is also crucial to operating internal and external control systems. However, regarding PPP construction and performance, these areas score the lowest among all disclosure indicators (15 percent and 19 percent, respectively), leaving contract management with the lowest overall score among project cycle stages, and they show only a slight improvement since 2020.

**Figure 30: Share of Economies That Adopt Good Practices Regarding Disclosure of Information Throughout the PPP Life Cycle Stages, 2020 and 2023, by Topic (percent, N=140)**

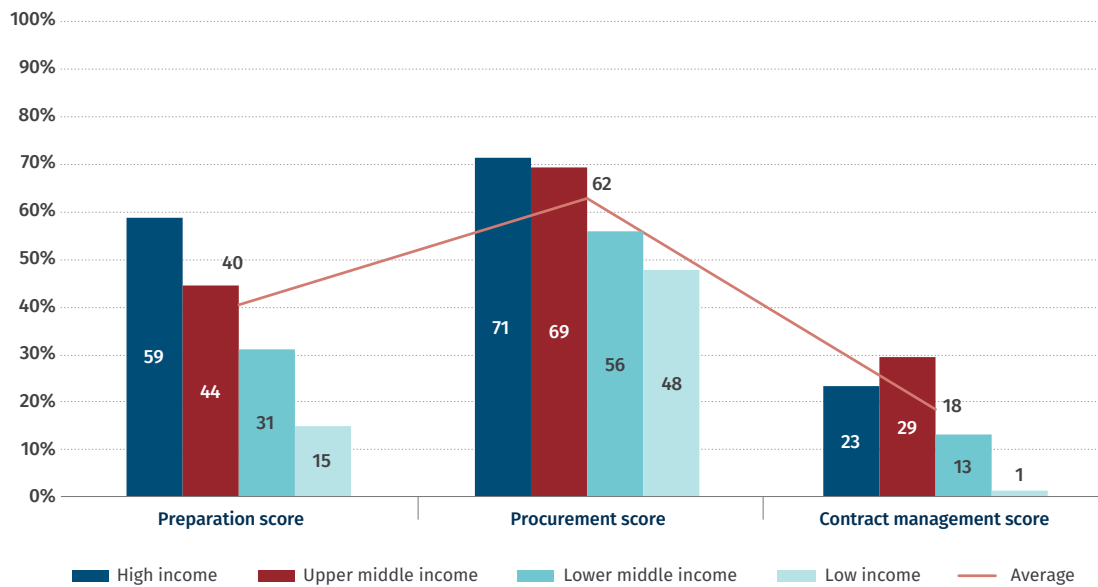


Source: Benchmarking Infrastructure Development 2023.  
 Note: PPP = public-private partnerships.

BID 2023 scores nine areas of best practices regarding the disclosure of information (Box 6). When comparing global averages by thematic area and income group (Figure 31), the highest global average of the disclosure of information score for BID 2023 is 62 points for the procurement stage. The average global score drops to 40 points for preparation, and goes even lower, to 18 points, for the contract management stage. This signifies that economies tend to facilitate the dissemination of information regarding the bidding process, probably in order to attract more bidders. However, the other areas that demand public information to be shared do not benefit from this relative ease.

Though the global average score for contract management is the lowest compared to other areas, the fact is that this is the only phase where high-income economies do not have the highest score, with upper-middle-income economies having an average score of 29 points, and high-income economies come in second with 23 points.

**Figure 31: Disclosure of Information Scores, by Thematic Area and Income Group (score 1–100, N=140)**



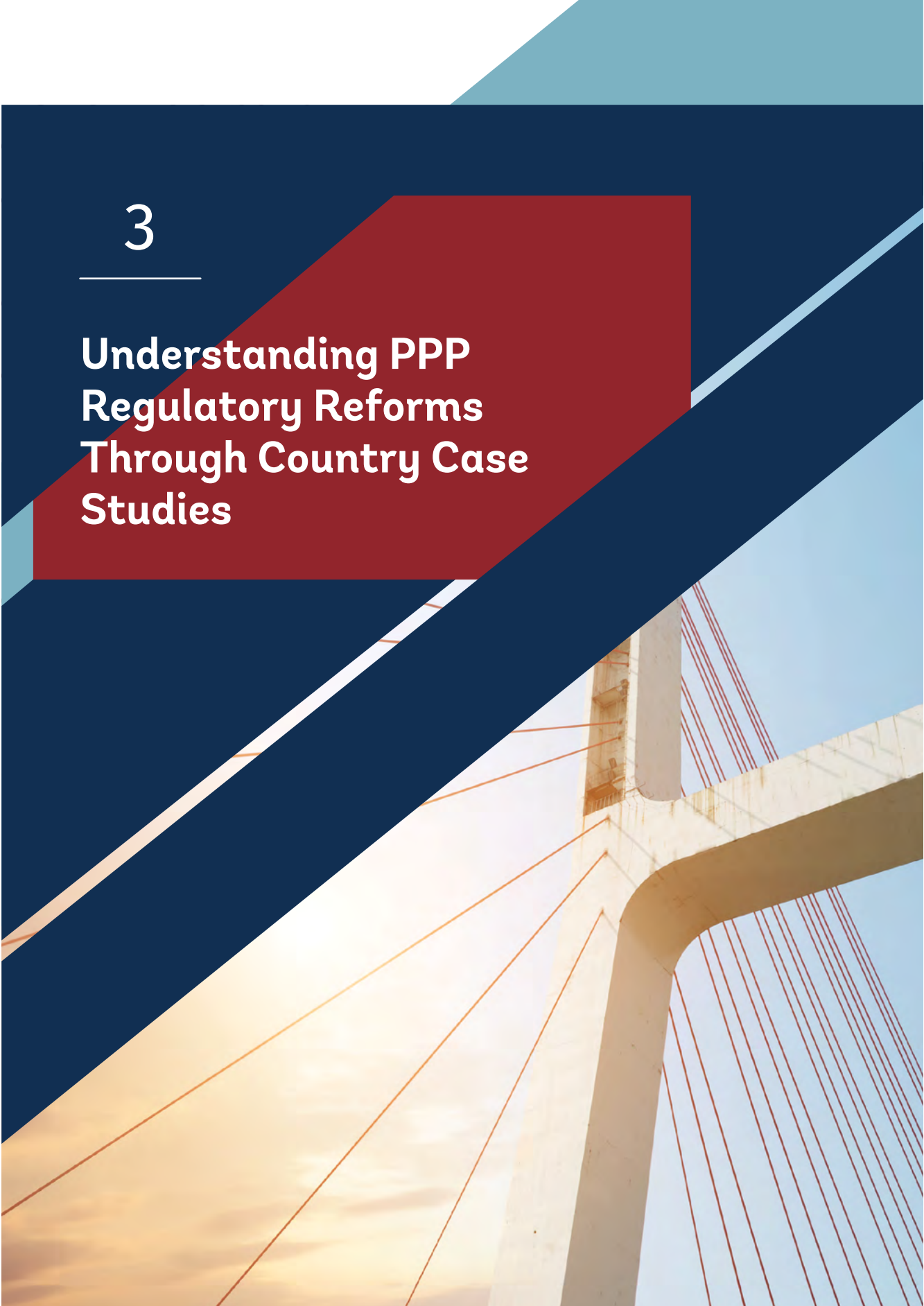
Source: Benchmarking Infrastructure Development 2023.

Merely three economies get the highest possible score regarding disclosure of information. Only Mexico, Paraguay, and the United States have legal requirements related to all nine areas of best practices for public transparency. Some economies have passed important reforms regarding the disclosure of information since June 2019. For example, five economies (namely, Ghana, Malawi, Montenegro, Senegal, and the United Arab Emirates) have passed legislation requiring that bidding documents be available online. Angola, Panama, and Saudi Arabia also have laws that mandate that the PPP contract performance information be available online. Another notable reform was observed in Tanzania, where the PPP Regulations 2020 mandated the creation of standardized PPP model contracts and/or transaction documents, which have been developed and are available on an online platform.<sup>77</sup>



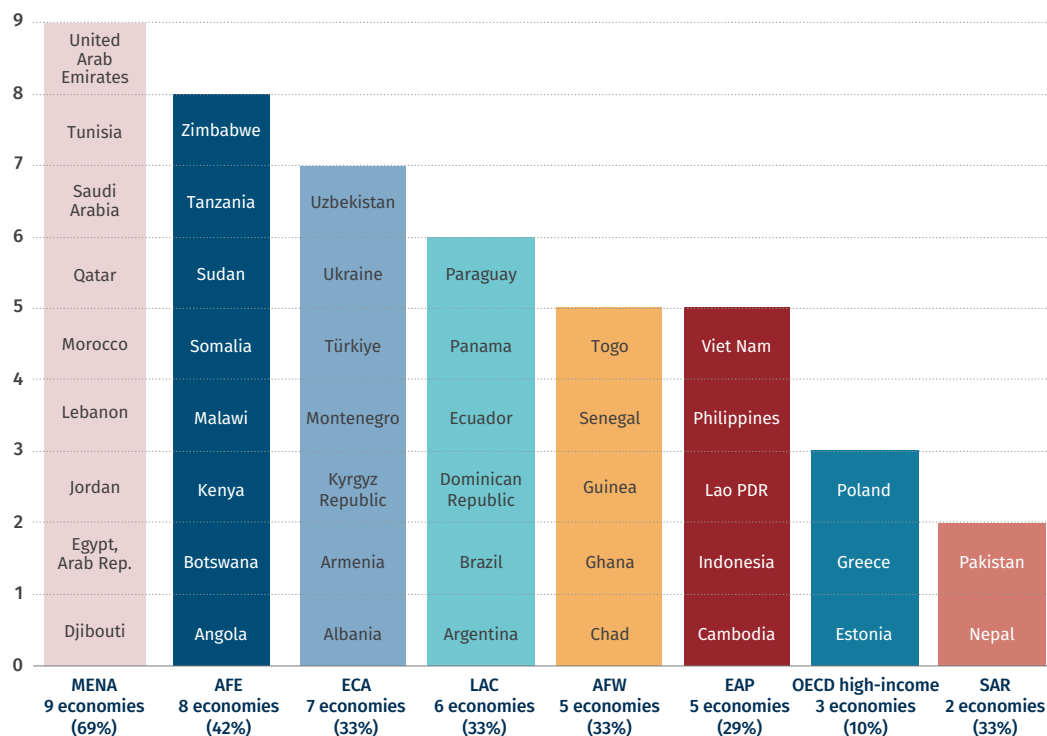
# 3

## Understanding PPP Regulatory Reforms Through Country Case Studies



A total of 60 economies have experienced some type of change in their regulatory framework, and 45 out of the 60 economies adopted reforms that improved their BID scores. MENA has the largest number of economies increasing scores, followed by AFE, ECA, and LAC (Figure 32).

**Figure 32: Economies with Captured Reforms and Changes in Score Regional Repartition**



Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia.

Percentage (%) indicates the percentage of economies within each region that have changed their score in at least one thematic area.

A set of nine case studies was prepared to present the experience of economies that have successfully undertaken legal and regulatory reforms on PPPs between June 2019 and June 2022, resulting in the most substantial improvements in their scores in at least one of the four thematic areas measured by BID 2023: preparation, procurement, contract management, and USPs. Table 1 below lists the nine selected economies and their BID scores.

**Table 1: Selected Economies for Case Studies and BID 2023 Positive Scores and Changes Since 2020**

		BID 2023 scores and positive changes ( $\Delta$ ) since 2020							
		Preparation		Procurement		Contract management		USP	
Economy	Region	2023	$\Delta$	2023	$\Delta$	2023	$\Delta$	2023	$\Delta$
Armenia	ECA	43	18	78	0	41	19	67	NR
Ghana	AFW	58	10	63	2	75	24	83	16
Montenegro	ECA	58	28	67	5	66	12	50	0
Panama	LAC	54	25	68	9	90	24	NR	
Saudi Arabia	MENA	56	15	91	15	77	36	92	9
Senegal	AFW	45	11	49	□	78	8	58	0
Tanzania	AFE	43	11	73	2	59	5	92	0
Togo	AFW	33	15	45	25	73	14	50	33
Ukraine	ECA	73	5	74	9	71	5	83	8

Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia. N/R = Not regulated.

The case studies aim to share experiences and lessons learned by showcasing positive regulatory changes in nine economies. Though these economies were among the ones with the largest improvement in their BID 2023 scores, regional and income group representation was also considered.

Whereas Togo stands out as the economy with the most remarkable increase in procurement and USP scores, it has also increased across all thematic areas. Montenegro registers the highest increase in preparation, and Saudi Arabia in contract management. Panama, Armenia, Ghana, Saudi Arabia, Senegal, and Tanzania made overall significant improvements compared to peers in their respective regions. The contract management thematic area has seen the most improvement. Thirty economies adopted new rules enhancing contract management.

The regulatory reform processes in PPPs are complex and multifaceted, reflecting each country's unique economic, political, and social landscape. Examining the experiences of Armenia, Ghana, Montenegro, Panama, Saudi Arabia, Senegal, Tanzania, Togo, and Ukraine reveals several commonalities and differences.

Firstly, the starting point for reforms varies significantly. Since June 2019, some countries, like Armenia, Montenegro, and Togo, have introduced new PPP laws. Panama did not possess stand-alone legislation for PPPs until the reform of 2019. Ghana has built upon existing PPP frameworks. Saudi Arabia introduced a new private-sector participation law that regulates PPPs. The Ghana PPP Act encapsulates important provisions from previous regulations, expands on those, and fills prior voids. The legal and regulatory framework for PPPs in Senegal has been revised several times, and its latest reform, adopting a new PPP law in 2021, aimed to overcome the shortcomings of a piecemeal framework and simplify processes. Tanzania has had special legislation concerning PPPs since 2010; however, over the years, these norms have been updated and amended in a continuous effort to improve the legal framework. Ukraine had a stand-alone PPP law but has now introduced amendments to that law and a new Concession Law of 2019.

Secondly, reforming PPP regulations is inherently time consuming and requires a consensus-driven approach. Stakeholder engagement is crucial, because reforms must balance the interests of the public sector, private investors, and civil society. This often involves extensive consultations, negotiations, and sometimes even capacity building among stakeholders to ensure that the new or amended laws are not only technically sound but also politically and socially acceptable.

In conclusion, although the nine economies examined show significant improvements in their PPP regulatory frameworks, the paths they have taken to achieve these reforms are diverse. Each country's journey reflects its unique context and the need for a tailored approach to PPP regulation that aligns with national development objectives and the broader investment climate. This section presents four case studies for Ghana, Panama, Saudi Arabia, and Ukraine. The case studies for Armenia, Montenegro, Senegal, Tanzania, and Togo are publicly available on the project's website (<https://bpp.worldbank.org>).

## Ghana<sup>78</sup>

### **Ghana's new PPP Act introduces significant reforms, with contract management achieving more improvements.**

Ghana has progressively been working towards a more robust PPP regulatory framework since 2011, with the implementation of the National Policy on Public-Private Partnerships (referred to as the PPP Policy). This instrument set out guidelines for the interim regulation of PPPs pending the enactment of the Ghana Public Private Partnership Act 2020 (Act 1039). The policy was complemented by the Public Procurement Act 2003 (Act 663), as well as the Ministry of Finance PPP Toolkit for Unsolicited Proposals 2012, the Public Procurement Amendment Act 2016 (Act 914), and the Public Financial Management Act 2016 (Act 921), which together established the legal framework for PPPs in the country.

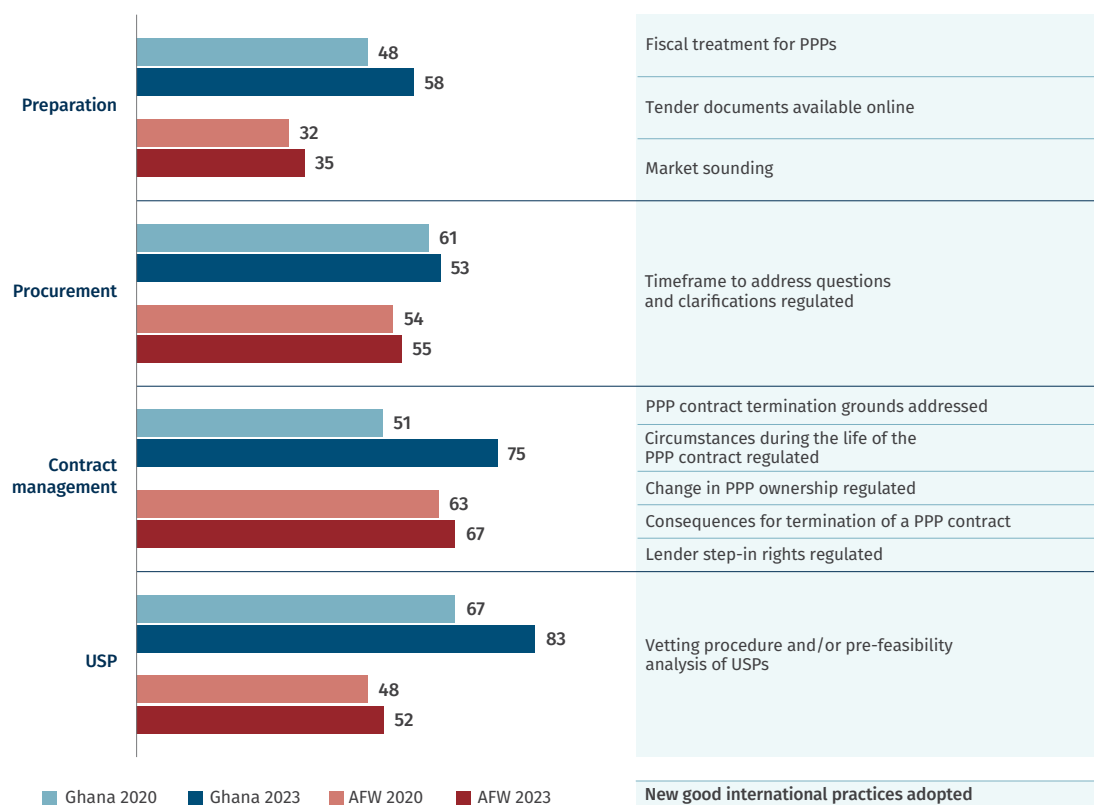
The process of adopting the PPP legislation spanned several years. A PPP bill was initially submitted to the Cabinet in 2014 but was returned for redrafting due to the Cabinet's concerns regarding the number of approval processes and the preparation time required for prospective projects. The revised bill was still being reviewed by parliamentary committees in 2016 when the general elections of that year saw it sidelined once again. More revisions of the bill took place in order to align the legislation with the vision of the newly elected government, and, in 2017, it was put before the new Cabinet. More edits followed, this time with input from the Office of the Attorney General, and, by February 2018, the bill was before the Cabinet again. At the close of that year, the final form of the PPP law was still undecided, but reform in this regard was expected. The process leading to the development of the current legislation was reinitiated in the last quarter of 2019. The draft PPP Bill was reviewed by the Ministry of Finance, and comments were submitted to the Office of the Attorney General for redrafting. Following the development of the draft bill, critical stakeholders were engaged in the third quarter of 2020 to solicit inputs for the finalization of the bill. In October 2020, executive approval was granted from the Office of the President, facilitating the onward submission of the PPP Bill to Parliament for consideration. The draft PPP Bill was circulated for a period of 14 days to solicit views from the general public. It was subsequently submitted for parliamentary consideration.

Consequently, the country introduced its first Public Private Partnership Act in 2020 (Act 1039), which came into effect on December 29. The PPP Act combines key components of the PPP regulatory framework by encapsulating important provisions from previous regulations, expanding on those, and filling in prior voids.<sup>79</sup> It regulates PPP arrangements in Ghana and promotes the use of private-sector resources for the provision of infrastructure and services through PPPs. Additionally, the Public Financial Management (Public Investment Management) Regulations, 2020 (L.I. 2411) were introduced as a reform that same year and serve as part of the legal, institutional framework for PPPs in the country alongside the Public Financial Management Act and Public Procurement Act.

The newly enacted PPP Act has brought forth considerable improvements to the regulatory framework in line with international best practices for PPPs. Though the areas of preparation, procurement, and unsolicited proposals all have seen developments thanks to the new legislation, special mention needs to be given to contract management, where the PPP Act has instituted significant progress, and the BID score for the contract management section improved from 51 to 75 (Figure 33). In this category, the new law expanded the functions of the PPP contract management team, which in Ghana is the Public Investment Unit (PIU). The norm requires the participation of the team members in the PPP procurement process, who are even able to undertake the tendering process on behalf of the contracting authority.<sup>80</sup> Additionally, the law now indicates the required qualifications of the members of this team<sup>81</sup> and that it shall consist of technical, financial, legal, procurement, and environmental and social safeguards personnel.

Moreover, the act expands on different circumstances that may occur during the execution of the PPP contract, such as establishing that the contract should contain provisions that state the basis of risk allocation in the event of a force majeure event and change in the law.<sup>82</sup> Noteworthy is the fact that the PPP Act is quite explicit about minimum contractual obligations required to be specified in project agreements.<sup>83</sup> The norm also details the need for establishing lender step-in rights, clauses related to contract termination, and consequences of termination, among other terms. Provisions like these aid in establishing a more reliable management process for both private and public sectors.

**Figure 33: Scores by Thematic Area for Ghana and the AFW Region, 2020 and 2023 (score 1-100)**



Source: Benchmarking Infrastructure Development 2023.  
Note: AFW = Western and Central Africa.

At the same time that Ghana has built on many new areas, others still have room for improvement. Regarding access to information, Ghana now requires tender/bidding documents to be available online<sup>84</sup> on the contracting authority's website and respective ministries. However, the PPP contract and its amendments are not required to be made available either by request or online.

Lastly, Ghana continues to strive towards progress when it comes to PPP legislation. The PPP Unit has ongoing work on the Public Private Partnership Regulations, an instrument to support the implementation of Act 1039, that could potentially bridge the gaps still left in the regulatory framework. Additionally, the government is developing standard tender documents and sector-specific framework agreements to streamline the procurement processes and provide greater clarity, certainty, and consistency in contractual arrangements. This is aimed at fostering investor confidence and mitigating project execution risks.

## Panama<sup>85</sup>

### **Panama establishes its first PPP law, with developments in nearly all major areas of the procurement process.**

Until 2019, Panama did not possess stand-alone legislation for PPPs. PPPs were then procured using public procurement laws and regulations. The PPP regime was created in Panama by Law 93 in September 2019, introducing the very first PPP law, aimed at encouraging private investment, social development, and job creation. Early drafts of this law were presented a decade before its adoption, and it was only in 2019 that the current government prioritized the PPP regime as one of the key government strategies to be implemented. This draft was updated taking into consideration best practices and following a three-tier umbrella approach to address the dynamic nature of PPP best practices and projects and allow for regular updates. The draft generated discussions over the scope of the law. The exclusion of certain public entities, particularly the National Institute of Aqueducts and Sewerage (IDAAN), from bidding was a major point of contention. Public sector unions had concerns about the potential privatization of public services, leading to the decision to exclude IDAAN from the scope of the PPP law. Additionally, the law was amended during the debate to only allow PPPs for infrastructure and maintenance in the education and health sectors.

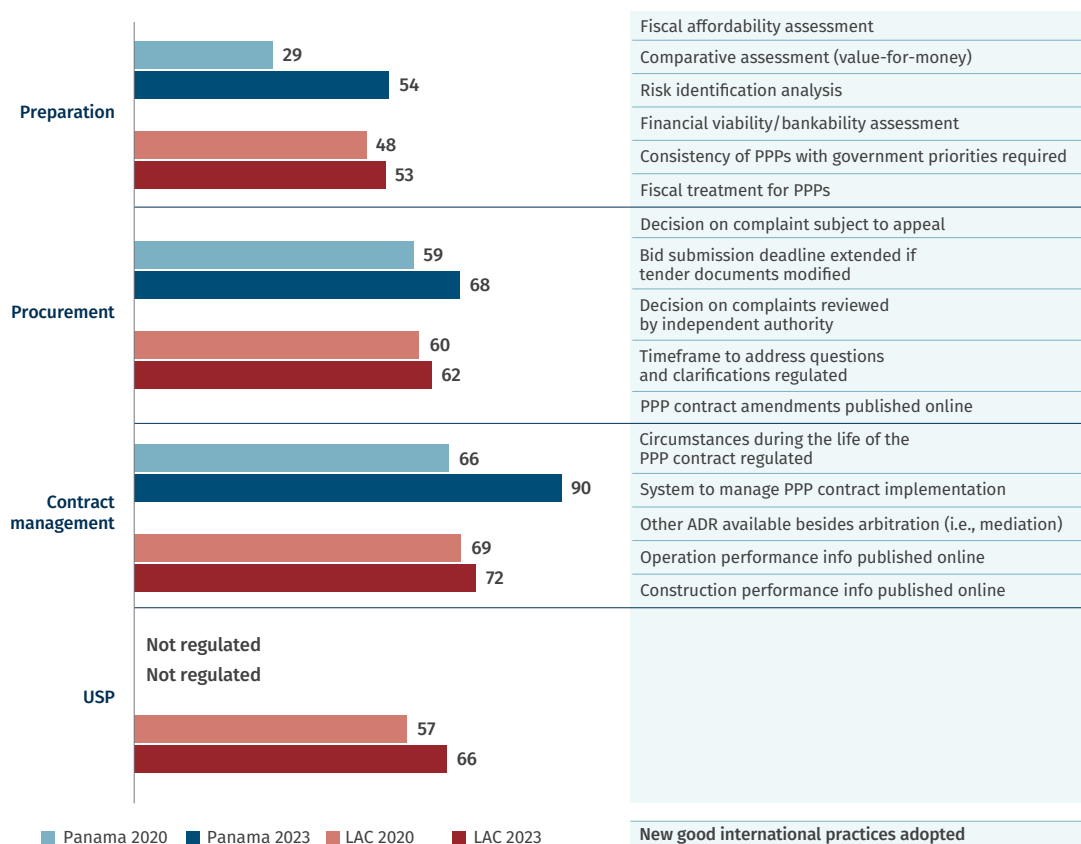
The PPP law serves as an “umbrella norm.” As such, it outlines key principles and specific requirements further developed in the PPP Regulations, issued by way of Executive Decree No. 840 of December 31, 2020, and updated by Executive Decree No. 119 of April 27, 2023.<sup>86</sup> Additionally, the country also reformed its Public Procurement Law and regulation, i.e., Law 22 of June 27, 2006, which regulates Public Procurement, modified by Law 153 of 2020, as well as Executive Decree No. 439 of September 10, 2020, which regulates Law 22 of 2006. These instruments are of supplemental application as provided for in the new PPP law.<sup>87</sup>

The regulatory framework of Panama benefited greatly from the reforms brought by the new and updated norms. With the introduction of the PPP law, a PPP unit was established. The PPP National Secretariat (translated from Secretaría Nacional de Asociaciones Público-Privadas), also referred to as SNAPP, is described on its own website as a technical unit whose main objective is to offer the necessary advice so that public initiatives are implemented under the public-private partnership modality in the country. The new legislation also adopted more good international practices on PPP preparation, improving the score from 29 to 54 points (Figure 34). At this time, the government



has established a specific system of budgeting and reporting liabilities for PPP projects, and it now requires the inclusion of PPPs in the project pipeline of the National Public Investment System (SINIP),<sup>88</sup> and details a specific procedure to ensure the consistency of PPPs with other public investment priorities. In this same area, pre-feasibility and feasibility studies have also been included with new requirements for fiscal affordability, risk assessments, comparative assessment, and financial viability or bankability assessment.

**Figure 34: Scores by Thematic Area for Panama and the LAC Region, 2020 and 2023 (score 1-100)**



Source: Benchmarking Infrastructure Development 2023.  
 Note: LAC = Latin America and the Caribbean.

The PPP law brings more mechanisms to afford transparency and security during the procurement process, such as providing a timeframe for the procuring authority to address questions and clarifications by bidders, as well as extending the proposal submission deadline due to the modifications introduced in the bidding/tender documents. It also guarantees that amendments to the contract will be available to the public, either by request or online.

Special mention needs to be given to contract management, an area that has improved by more than 20 points, almost attaining the top score, with a total score of 90 points. Some of the biggest changes have happened in terms of tools that the procuring or contract management authority can establish as part of the monitoring and evaluation system of the PPP contract implementation after construction. In this regard, the PPP Regulations authorize payments linked to performance and abatement (reduction) of payments for non-performance of operating obligations under the PPP contract. The PPP law also innovates in the context of alternative dispute resolution (ADR) methods available by providing a dispute resolution board to address grievances.<sup>89</sup>

Although Panama has greatly enhanced its legal and institutional framework for PPPs, gaps still remain in certain areas, which could be explored further by future legislation. The norms in place can still expand significantly in terms of preparation of PPPs by providing comprehensive methodologies for all the feasibility studies that are required, as well as developing standardized PPP model contracts and/or transaction documents in order to ensure consistency for the procurement process.<sup>90</sup>

Nonetheless, Panama continues to strengthen its regulatory framework by publishing resolutions that expand on specific points covered by the regulations. This is exemplified by Resolution No. ER-01-L1-2023, which approves the text of the “anti-corruption clause” and “integrity clause” in accordance with the provisions of the PPP law and its regulations. Once again, it shows Panama’s commitment to providing a transparent PPP process. In addition, Panama pursues continuous efforts to update its PPP regulatory framework because it is preparing for a new reform of a decree that seeks to clarify and standardize certain bidding and transparency requirements.<sup>91</sup>

## Saudi Arabia<sup>92</sup>

### **Saudi Arabia’s new PPP framework enhances the competitiveness of the procurement process and reinforces contract management.**

PPPs in Saudi Arabia were initially regulated under various governing provisions and were embedded in a broader regulatory framework pertaining to infrastructure and public service projects,<sup>93</sup> as well as public procurement, including the Government Tenders and Procurement Law of 2017.<sup>94</sup>

In 2021, Saudi Arabia introduced significant reforms aimed at increasing private-sector participation. This has led to the adoption of a PPP-specific regulatory framework, which aims to achieve the Saudi 2030 vision objectives regarding increasing private sector participation.<sup>95</sup> PPPs in Saudi Arabia are thus currently procured under the private sector participation (PSP) framework developed in accordance with international good practices. This includes the Private Sector Participation Law (“PSP Law”),<sup>96</sup> the Implementing Regulations of the PSP Law (“Implementing Regulations”),<sup>97</sup> the Private Sector Participation Governing Rules (“Governing Rules”),<sup>98</sup> and the Privatization Projects Manual.<sup>99</sup>

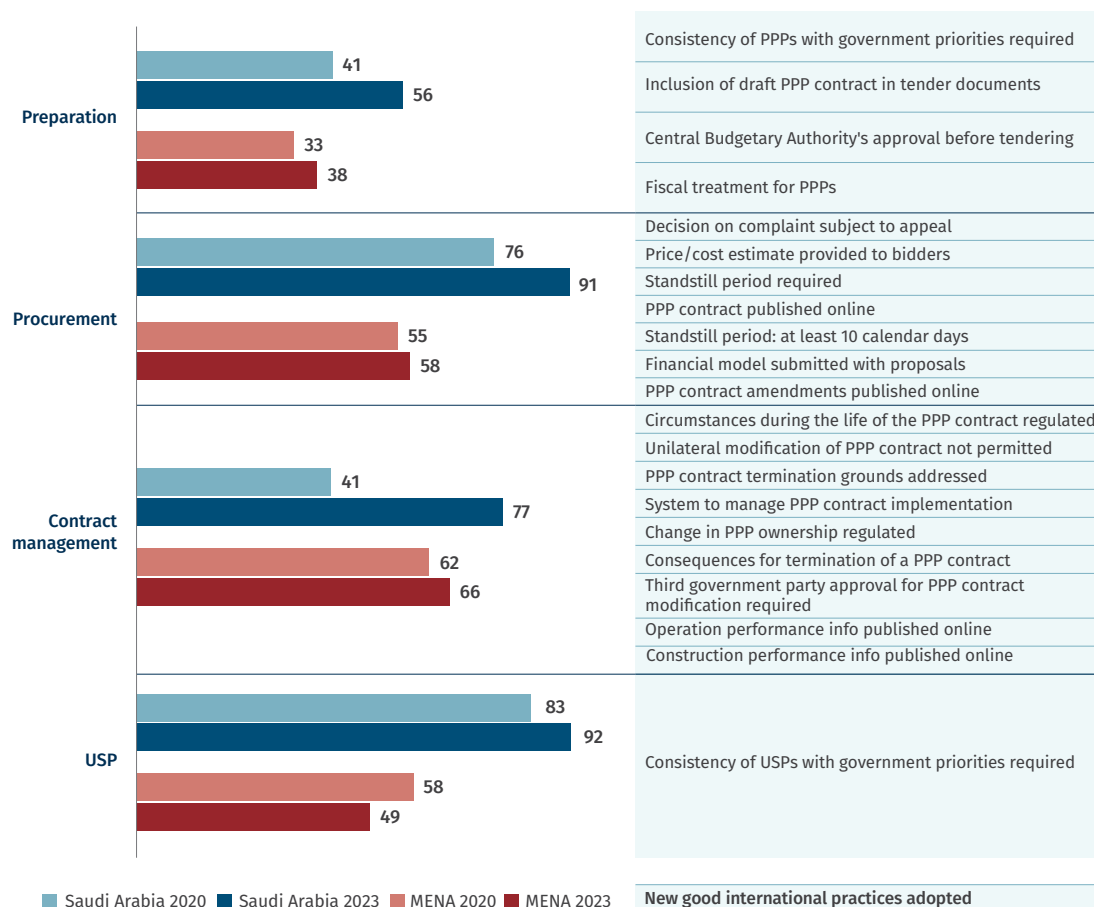
The process of drafting the PSP Law started in 2017, shortly after the establishment of the National Center for Privatization (NCP). The NCP was the leading governmental entity in charge of developing the PSP Law. It started by conducting a full assessment to identify legislative barriers and various challenges hindering the implementation of PSP projects. This assessment covered applicable laws and regulations, court precedents dealing with contractual rights and obligations, especially when the government is a contracting party, and government practices linked to infrastructure projects. Based on the outcome of the assessment phase, the NCP developed the policy options for each topic of the PSP Law and set the approaches to be reflected in the first draft. After multiple rounds of consultations with select public and private sector stakeholders, and after publishing the draft law on the NCP website for public feedback, the draft was submitted to the central government for review in October 2018. There, it underwent several levels of revisions, starting with in-depth technical and legal revisions by the special committee formed by the Bureau of Experts, which included members from different ministries. The draft was then submitted to the Shura Council and the Council of Ministers for approval, and the new law was eventually issued by a royal decree.

Notably, one of the main challenges faced during the drafting process was the lack of a civil law in Saudi Arabia, which would normally govern transactions and contracts in general.<sup>100</sup> More precisely, it was a question of the extent to which the PSP Law shall address general contract-related topics. It was then decided to limit the scope of the PSP Law to key issues with high importance and relevance to PPP agreements, namely termination and enforcing the contractual mutual agreement of the parties to the contract.

In general, the new regulatory framework has reinforced the preparation requirements, offered different methods of procurement, and strengthened the management of the PPP contract, an area where there are important improvements. Saudi Arabia has indeed put in place a more robust contract management system overseeing the implementation of PPPs and ensuring its success in delivering the expected outcome.

As a result, the score attributed to Saudi Arabia has overall improved: preparation from 41 to 56; procurement from 76 to 91, attaining the highest score among the 140 countries assessed by BID; and contract management from 41 to 77 reflecting the largest improvement among all economies (Figure 35). The new regulatory framework has also ameliorated the regulation of USPs by introducing a specific procedure to ensure they are consistent with other government investment priorities.

**Figure 35: Scores by Thematic Area for Saudi Arabia and the MENA Region, 2020 and 2023 (score 1-100)**



Source: Benchmarking Infrastructure Development 2023.  
 Note: MENA = Middle East and North Africa.

The new PPP legislation has introduced a more competitive and effective procurement framework. It guarantees fair treatment of all bidders, transparency, and equality throughout the process while ensuring the protection of the public interest. One of the many notable innovations of the new law in this realm is the creation of a standstill period (14 calendar days), allowing bidders to submit their complaints throughout the tendering process, especially prior to the signature of the contract.

Given the long-term nature of PPPs, a sound contract management system is crucial to ensuring the successful implementation and delivery of the PPP project. Saudi Arabia has seen considerable developments in this area, particularly through the establishment of a specific management system. The development of a contract management and monitoring plan is now required under the new legislation. The plan is designed to structure the implementation process and shall include, inter alia, a monitoring mechanism, performance evaluation indicators, a schedule for the progress of the implementation, governance procedures, and mechanisms for addressing the difficulties and problems in the implementation of the PPP project.<sup>101</sup>

Moreover, the law enhances the transparency of the implementation process. Indeed, an online registry that includes a complete, up-to-date, and accurate database of all information regarding PPPs is to be established. This will allow tracking of progress and completion of the construction work as well as the PPP contract performance information. It is also worth noting that early termination of PPP contracts is better regulated under the new framework, especially in that it addresses the grounds for termination and the consequences thereof by requiring defining termination procedures, their effects, and resulting compensation in the PPP contract.<sup>102</sup>

Though the newly introduced PSP Law and regulations brought about many improvements and clearly defined PPP requirements,<sup>103</sup> one provision allows it to be departed from. In fact, the Council of Economic and Development Affairs (CEDA) may classify the infrastructure of a public service project as a project that is “not subject to the provisions of the Law, irrespective of whether the definition of PPP or the definition of Divestment contained in the Law applies or not,” in which case the project will be subject to other applicable laws.<sup>104</sup>

Lastly, it is worth noting that Saudi Arabia has room to improve its PPP preparation. This can be accomplished by establishing a distinct system for accounting and reporting liabilities originating from PPPs, both direct and contingent, to ensure the effective oversight of PPP programs. The country has also yet to define methodologies for market sounding and socioeconomic assessments preceding the procurement phase. Additionally, the disclosure of relevant information and transparency of the entire process can still be fostered if Saudi Arabia opts for the publication of all the pre-feasibility studies online, which can also be part of the tender documents.

## Ukraine<sup>105</sup>

### **Ukraine has established new PPP legislation in order to attract investment and revitalize the infrastructure industry.**

Over the past several years, the government of Ukraine has made a great effort to develop and implement the comprehensive PPP framework in the country at both national and regional levels. In Ukraine, the legal framework consists of the PPP Law of 2010, amended in 2019, and the new Concession Law of 2019.



The first Concession Law, adopted in 1999, focused mostly on brownfield projects and was used only for “asset monetization” type projects, when existing utilities or coal mines were transferred to a private investor to improve operations, and the concessioner paid a concession fee to the grantor. Very few concessions were implemented on the basis of the Concession Law (1999). One key challenge was that there were many sectoral concession laws in addition to the main ones (special laws on concessions for heat supply, water supply, coal mines, and roads), and all the laws were not aligned.

In 2010, the first PPP Law was approved by the Parliament. It introduced the possibility of structuring availability-based PPP projects and was focused not only on brownfield projects but also on regulating greenfield projects. Among other things, the law introduced a unified process for project preparation and appraisal regardless of the type of contract (concession or non-concession PPP). At the same time, this unified approach was fully implemented in practice only in 2016 after the approval of amendments to the PPP Law (2010) and Concession Law (1999).

In March 2018, the government submitted the Draft Law on Concession to Parliament. In April 2018, the draft law was approved in the first reading. In August 2018, the draft law was ready for the second reading, but the voting was postponed due to the upcoming presidential (April 2019) and parliamentary (July 2019) elections. After the parliamentary elections, a newly elected Parliament established a new government (August 2019), which redrafted a bit the Draft Law on Concession (No. 8125) and registered it under a new number (No. 1046). This Draft Law on Concession was approved

in the first reading in September 2019. At that moment, the Ministry of Infrastructure finalized the tender documents for the pilot projects, and that experience was incorporated in the Draft Law on Concession for the second reading, which was finally approved by Parliament in October 2019.

Eventually, the long-awaited Law on Concession No. 155-IX (hereinafter “Concession Law”) was enacted on October 19, 2019, replacing the original Law on Concession adopted in 1999 (No. 997-XIV). Following the adoption of the Concession Law, the Cabinet of Ministers of Ukraine approved several regulations (Nos. 542, 621, 950, 986, 2721) as well as the new methodology for calculating concessionary payments (No. 706) and an Order “On approval of the Methodology of the PPP Efficiency Assessment” approved by the Ministry of Economy (No. 1067), which had been prepared by the project management team of the Ministry of Infrastructure and the PPP Agency on the basis of the CP3P PPP Certification Guide.<sup>106</sup> The changes to the Budget Code of Ukraine (BCU)<sup>107</sup> were made on the basis of the private finance initiatives (PFIs) type of PPPs in Ukraine. A new Concession Law (2019) was introduced through amendments to the PPP Law on non-concession PPPs (government-pay PFIs), but there was no legal framework for committing to the long-term liabilities because Ukrainian budgetary obligations were limited to one-year budget only. Therefore, changes to the Budget Code were needed. Since 2015, the Ministry of Economy has put a lot of effort into approving those changes, and finally, after seven years, in February 2022, the changes were approved by Parliament. Moreover, the PPP Law was amended during the same year.

According to the adopted changes to the BCU No. 2043-XI, the central body of executive power maintains a register of long-term obligations within the PPP framework and posts relevant information on its official website per the procedure determined by the Cabinet of Ministers of Ukraine.<sup>108</sup> Moreover, the amended BCU specifies the approach to accounting, reporting, and controlling the long-term public liabilities borne by the PPP contract and open public register of such long-term budget liabilities.<sup>109</sup>

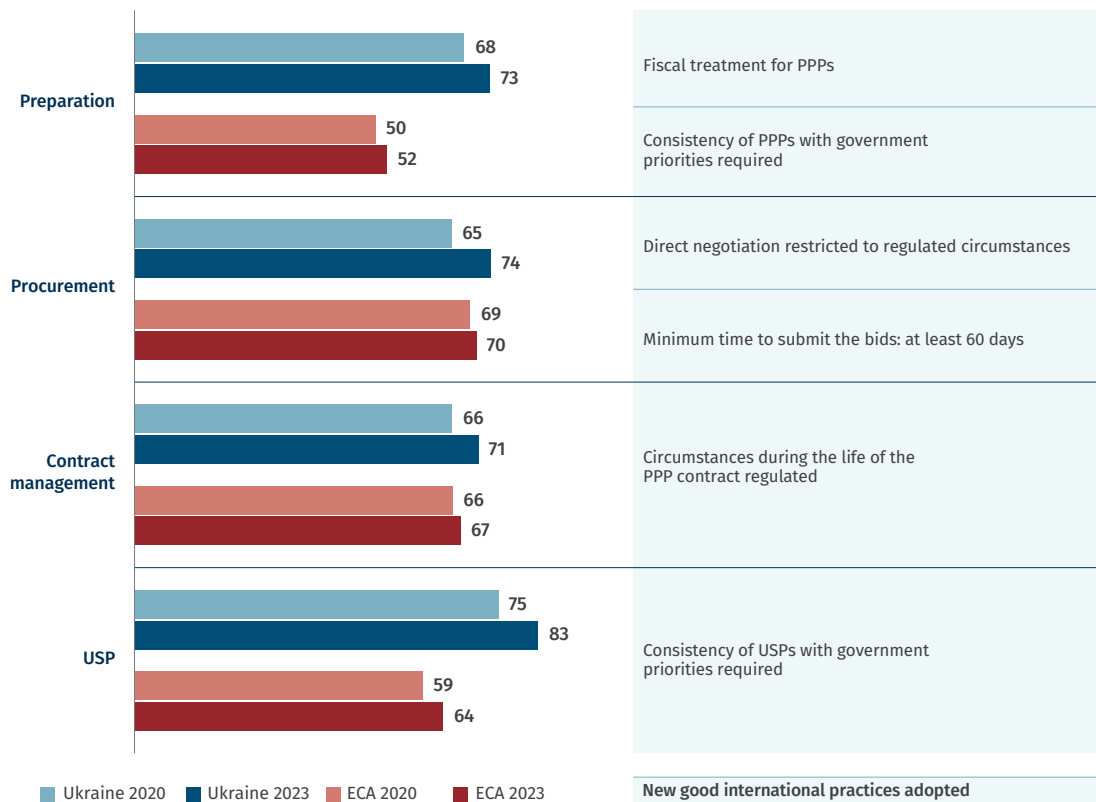
The new Concession Law instituted a number of positive reforms in the procurement phase. More specifically, the law establishes transparent procedures for selecting concessionaires through a competitive dialogue. If the procuring authority is unable to clearly define the project’s technical and qualitative characteristics, a competitive dialogue can be held to adopt an optimal solution through negotiations with the participants.<sup>110</sup> Moreover, the concession agreement may be concluded through direct negotiation.<sup>111</sup> Also, Regulation No. 909, on the procedure for conducting a concession tender and competitive dialogue in the electronic trading system, specifies that the concluded concession agreement is public and must be published in the electronic trading system.<sup>112</sup>

Furthermore, during the contract management phase, the new Concession Law improved the terms of tools that the procuring or contract management authority can establish as part of the monitoring and evaluation system of the PPP contract implementation after construction. One of the essential clarifications is that payments are linked to performance, and if the concessionaire does not achieve performance indicators, the fee for operational readiness may be reduced by the amount of fines stipulated in the concession agreement.<sup>113</sup>

Lastly, by developing a new transparent PPP framework, the BID scores attributed to Ukraine have significantly improved in the preparation thematic area from 68 to 73, procurement from 65 to 74, contract management from 66 to 71, and unsolicited proposals from 75 to 83 (Figure 36). Additional reforms, however, are needed to strengthen the procurement and contract management processes. For instance, a standstill period must be specified after the contract has been awarded but prior to contract signing to allow unsuccessful bidders the opportunity to contest the award decision.



**Figure 36: Scores by Thematic Area for Ukraine and the ECA Region, 2020 and 2023 (score 1-100)**



Source: Benchmarking Infrastructure Development 2023.  
 Note: ECA = Europe and Central Asia.

The government of Ukraine continues to prioritize developing and enforcing a strong PPP framework. Since February 2022, the Parliament of Ukraine has been working to adopt Draft PPP Law No. 7508 to simplify and enhance the PPP procedures and create all the necessary conditions for attracting private capital for the recovery and reconstruction of Ukraine’s infrastructure.

One of the main challenges encountered during the implementation of the new laws and regulations was to explain the reasoning behind them to the newly elected Parliament and government. Moreover, to ensure the success of the reforms, it is crucial that the ministry responsible for implementing the changes has strong leadership. If the reform is not executed in a timely manner, it will take several years to fully enforce the law.

# Conclusions



## Conclusions

The drive to bridge the infrastructure gap through private capital mobilization and increased efficiency in service delivery has seen a significant shift towards private sector involvement, with PPPs emerging as a popular model. The success of PPPs hinges on a robust ecosystem beyond sound regulation, as demonstrated by the experiences of Colombia, Kenya, and the Philippines. These countries underscore the necessity of regulatory and institutional reforms, risk mitigation mechanisms, and the ability to adapt to market changes to foster a pipeline of viable projects.

The quality of regulation is a critical component of the public-private partnership (PPP) ecosystem. Although it is just one of many factors, empirical evidence consistently demonstrates a positive relationship between regulatory quality and investment in PPP infrastructure projects. The empirical analysis conducted for this report reveals that, although causality cannot be conclusively established, major regulatory reforms tend to coincide with increased investment in infrastructure PPPs. As shown by the primary data collected under BID, countries have reformed their regulatory frameworks over time to address legislative vacuums and clarify the PPP development process.

The initiative's findings highlight major regulatory reforms undertaken by 45 countries, particularly in the MENA region, and an overall increase in global scores across thematic areas, indicating a global trend toward strengthening PPP frameworks. Contract management was the thematic area in which the largest number of economies increased their score. Preparation is the thematic area with more room for improvement.





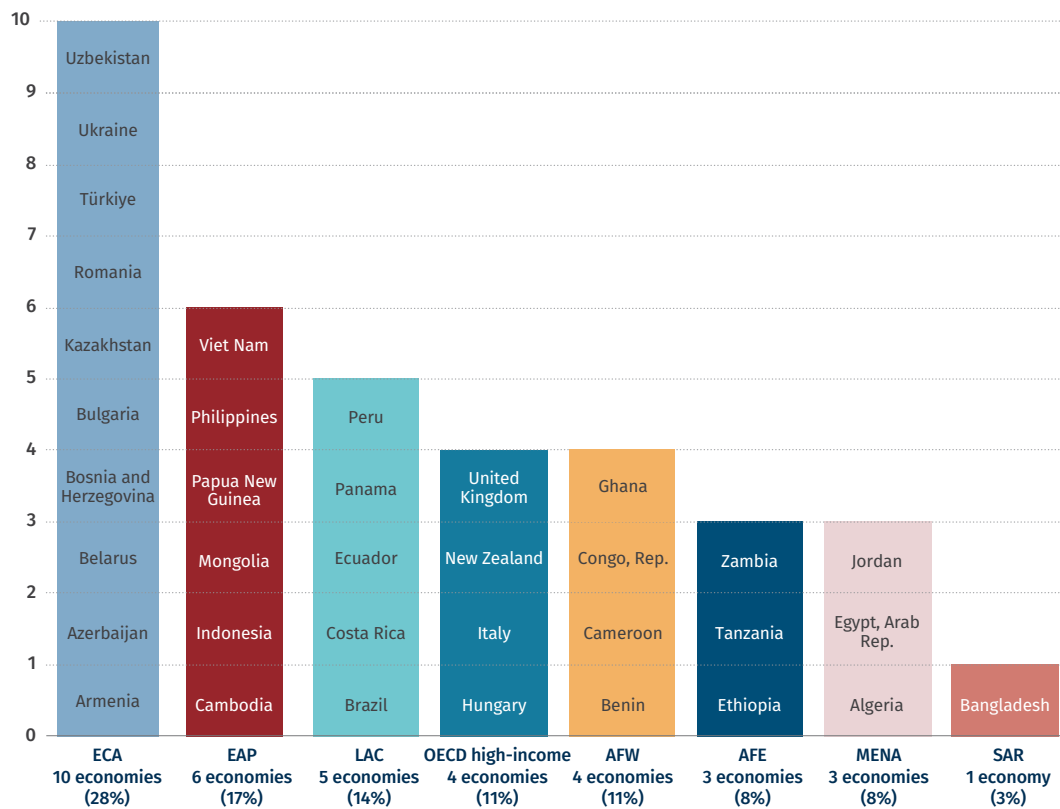
The trend to establish PPP units and project development funds (PDFs), and the strengthening of the fiscal management system of PPPs continues from previous years. In the preparation phase, the adoption of the requirement to prepare various assessments increased, yet only 5 percent of the economies require market sounding for technology and innovations, representing only a 1 percent increase since 2020. Some of the more advanced procurement practices are still quite uncommon. Only 11 percent of the surveyed economies include the possibility of holding a debriefing meeting in their legislation, and a mere 19 percent meet the requirement of allowing at least 60 calendar days for the bidders to prepare and submit their bids, which could allow adequate time for all bidders to prepare their proposals. Other good international procurement practices also remained rarely adopted, specifically online publication of contract amendments (22 percent) and having a specific procedure when only one bid is received (20 percent). Few economies have adopted good practices regarding information disclosure. Despite slight progress, only 15 percent and 19 percent of the surveyed economies allow the publication of information pertinent to project construction and operation performance, respectively. Although progress was shown in the adoption of good practices for USPs, only 13 percent of the economies require by law a minimum period of at least 90 days during which the prospective bidders may prepare their proposals.

The case studies of Ghana, Panama, Saudi Arabia, and Ukraine show that these economies have taken diverse paths to achieve their PPP reforms. Each country's journey reflects its unique context and the need for a tailored approach to PPP regulation that aligns with national development objectives and the broader investment climate. The landscape of PPP regulation is continually evolving. Even economies that have undergone significant reforms continue to refine their regulatory frameworks to provide greater clarity as they gain insights from PPP project development. Improving the PPP legal framework tailored to a specific country's market conditions is an iterative process, and many nations still have room to implement additional legal and institutional reforms to enable the effective operation of complex PPPs.

Since the BID 2023 data collection cut-off date of June 1, 2022, 36 economies have amended their legal and regulatory frameworks governing PPPs. All eight regions experienced reforms, with the highest number in ECA (10 economies) and the lowest in South Asia, with one economy (Figure 37). Consequently, ongoing efforts are required to continue monitoring, gathering information, and analyzing relevant legal information to understand the constantly evolving nature of the PPP regulatory landscape.



**Figure 37: Economies with Captured Ongoing Reforms After June 1, 2022, Number by Region (percent, N=140)**



Source: Benchmarking Infrastructure Development 2023.

Note: AFE = Eastern and Southern Africa; AFW = Western and Central Africa; EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia.

Over the past few years, many economies worldwide have adopted PPP stand-alone legislation and regulations. Since June 2022, three more economies (Azerbaijan, Mongolia, and the Republic of Congo) have joined that group by enacting their first PPP laws.

In this BID report, several economies (Armenia, Brazil, Cambodia, Ecuador, Ghana, Indonesia, Jordan, Panama, the Philippines, Tanzania, Türkiye, Egypt, Ukraine, Uzbekistan, Viet Nam, and Zambia) made significant improvements by enacting their first PPP laws and approving the existing PPP legal frameworks. Although some of these economies have made positive changes since the BID 2020 report, they remain committed to improving the PPP framework further and have taken additional steps to introduce some changes that affected their existing PPP regulations.

Furthermore, a number of economies (Algeria, Bangladesh, Belarus, Benin, Bosnia and Herzegovina, Bulgaria, Cameroon, Costa Rica, Ethiopia, Hungary, Italy, Kazakhstan, New Zealand, Peru, the United Kingdom, Romania, and Papua New Guinea) are continuing to reform PPP legislation by amending their existing laws, regulations, and guidelines to improve the procurement processes in the countries.

The regulatory changes mentioned above illustrate the constantly evolving nature of regulations worldwide. The Benchmarking Infrastructure Development Initiative remains committed to continuously capturing these reforms and drawing lessons to inform future policy decisions.

Given the level of detail, the findings in this report are necessarily limited, providing just a glimpse of the possible types of analysis and comparisons. For comprehensive country-level details and specific recommendations of good international practices yet to be adopted, visit the project's revamped and interactive website, which contains economy profiles, customized queries, further methodological details, and the complete dataset: <http://bpp.worldbank.org>.







# Economy Data Tables for PPP Scores

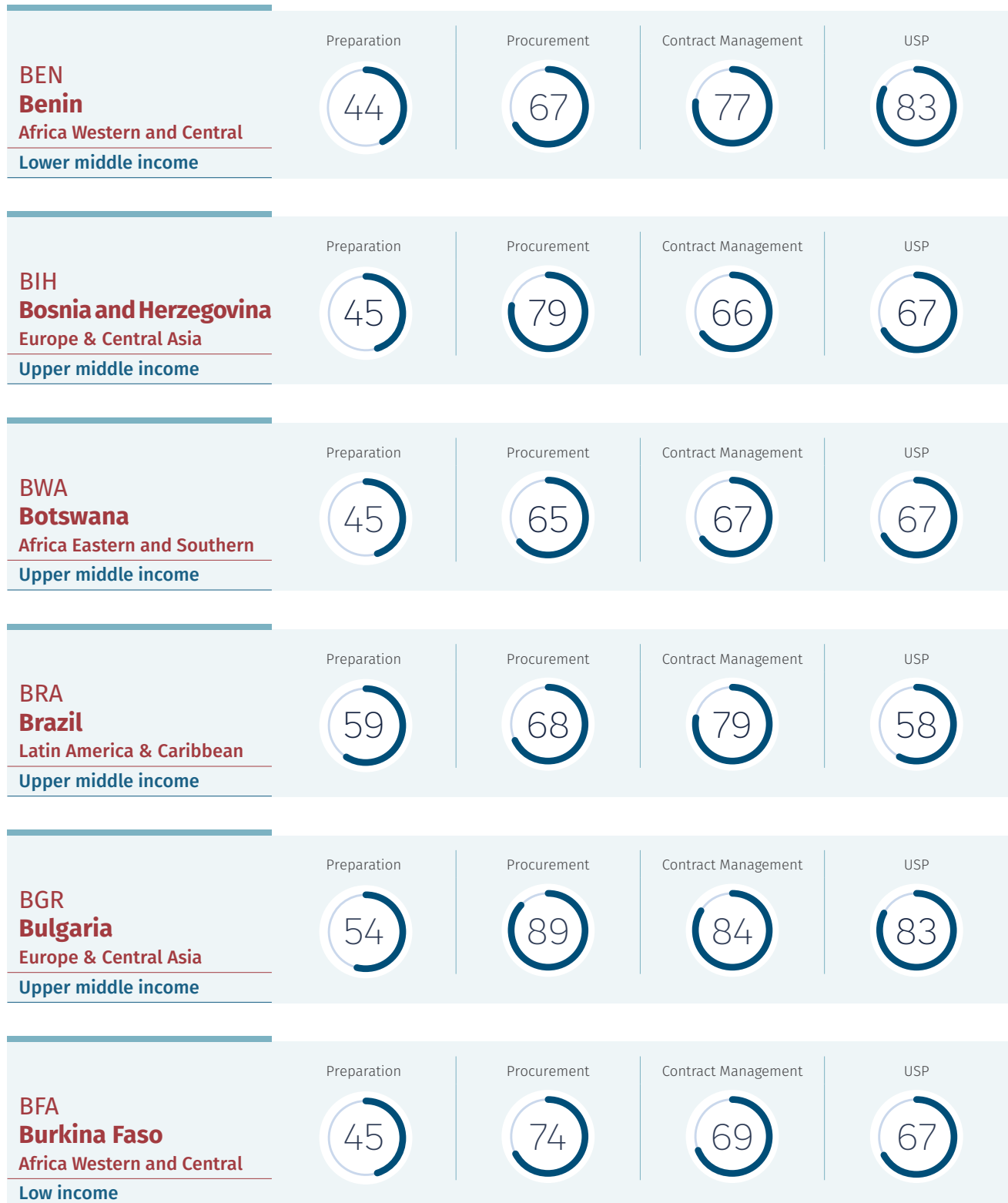
## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>AFG</b> <b>Afghanistan</b> South Asia Low income	43	51	58	75
<b>ALB</b> <b>Albania</b> Europe & Central Asia Upper middle income	65	86	67	USP Explicitly prohibited
<b>DZA</b> <b>Algeria</b> Middle East & North Africa Lower middle income	18	52	64	USP Not regulated and do not happen in practice
<b>AGO</b> <b>Angola</b> Africa Eastern and Southern Lower middle income	32	65	56	33
<b>ARG</b> <b>Argentina</b> Latin America & Caribbean Upper middle income	51	67	73	75
<b>ARM</b> <b>Armenia</b> Europe & Central Asia Upper middle income	43	78	41	67

## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>AUS</b> <b>Australia</b> High income: OECD High income	87	71	87	67
<b>AUT</b> <b>Austria</b> High income: OECD High income	51	78	52	USP Not regulated and do not happen in practice
<b>AZE</b> <b>Azerbaijan</b> Europe & Central Asia Upper middle income	30	43	51	USP Not regulated and do not happen in practice
<b>BGD</b> <b>Bangladesh</b> South Asia Lower middle income	54	62	48	75
<b>BLR</b> <b>Belarus</b> Europe & Central Asia Upper middle income	70	52	64	50
<b>BEL</b> <b>Belgium</b> High income: OECD High income	15	65	47	USP Not regulated and do not happen in practice

## PPP Legal Scores



## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>BDI</b> <b>Burundi</b> Africa Eastern and Southern Low income	26	61	66	83
<b>KHM</b> <b>Cambodia</b> East Asia & Pacific Lower middle income	26	8	76	17
<b>CMR</b> <b>Cameroon</b> Africa Western and Central Lower middle income	29	32	55	33
<b>CAN</b> <b>Canada</b> High income: OECD High income	71	66	47	Not regulated and do not happen in practice
<b>TCD</b> <b>Chad</b> Africa Western and Central Low income	30	44	63	33
<b>CHL</b> <b>Chile</b> High income: OECD High income	44	70	90	67



## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>CHN</b> <b>China</b> East Asia & Pacific Upper middle income	54	80	81	50
<b>COL</b> <b>Colombia</b> Latin America & Caribbean Upper middle income	83	75	80	92
<b>COD</b> <b>Congo, Dem. Rep.</b> Africa Eastern and Southern Low income	24	64	67	67
<b>COG</b> <b>Congo, Rep.</b> Africa Western and Central Lower middle income	21	65	55	0
<b>CRI</b> <b>Costa Rica</b> Latin America & Caribbean Upper middle income	39	53	50	Not regulated and do not happen in practice
<b>CIV</b> <b>Côte d'Ivoire</b> Africa Western and Central Lower middle income	28	67	67	50

## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>HRV</b> <b>Croatia</b> Europe & Central Asia High income	46	89	83	USP Explicitly prohibited
<b>CZE</b> <b>Czech Republic</b> High income: OECD High income	76	85	71	USP Not regulated and do not happen in practice
<b>DNK</b> <b>Denmark</b> High income: OECD High income	48	80	63	USP Not regulated and do not happen in practice
<b>DJI</b> <b>Djibouti</b> Middle East & North Africa Lower middle income	40	56	79	USP 50
<b>DOM</b> <b>Dominican Republic</b> Latin America & Caribbean Upper middle income	51	72	63	USP 67
<b>ECU</b> <b>Ecuador</b> Latin America & Caribbean Upper middle income	43	47	65	USP 92

## PPP Legal Scores

<p><b>EGY</b>  <b>Egypt, Arab Rep.</b>                      Middle East &amp; North Africa                      Lower middle income</p>	<p>Preparation                      52</p>	<p>Procurement                      54</p>	<p>Contract Management                      76</p>	<p>USP                      17</p>
<p><b>SLV</b>  <b>El Salvador</b>                      Latin America &amp; Caribbean                      Lower middle income</p>	<p>Preparation                      55</p>	<p>Procurement                      68</p>	<p>Contract Management                      92</p>	<p>USP                      75</p>
<p><b>ERI</b>  <b>Eritrea</b>                      Africa Eastern and Southern                      Low income</p>	<p>Preparation                      0</p>	<p>Procurement                      5</p>	<p>Contract Management                      8</p>	<p>USP                      Not regulated and do not happen in practice</p>
<p><b>EST</b>  <b>Estonia</b>                      High income: OECD                      High income</p>	<p>Preparation                      32</p>	<p>Procurement                      82</p>	<p>Contract Management                      38</p>	<p>USP                      Not regulated and do not happen in practice</p>
<p><b>ETH</b>  <b>Ethiopia</b>                      Africa Eastern and Southern                      Low income</p>	<p>Preparation                      28</p>	<p>Procurement                      61</p>	<p>Contract Management                      55</p>	<p>USP                      83</p>
<p><b>FIN</b>  <b>Finland</b>                      High income: OECD                      High income</p>	<p>Preparation                      32</p>	<p>Procurement                      74</p>	<p>Contract Management                      40</p>	<p>USP                      Not regulated and do not happen in practice</p>

## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>FRA</b> <b>France</b> High income: OECD High income	60	87	69	Not regulated and do not happen in practice
<b>GAB</b> <b>Gabon</b> Africa Western and Central Upper middle income	13	36	58	50
<b>GEO</b> <b>Georgia</b> Europe & Central Asia Upper middle income	65	74	79	83
<b>DEU</b> <b>Germany</b> High income: OECD High income	59	77	73	Not regulated and do not happen in practice
<b>GHA</b> <b>Ghana</b> Africa Western and Central Lower middle income	58	63	75	83
<b>GRC</b> <b>Greece</b> High income: OECD High income	51	91	74	100

## PPP Legal Scores

Country	Preparation	Procurement	Contract Management	USP
<b>GTM</b> <b>Guatemala</b> Latin America & Caribbean Upper middle income	44	61	77	Not regulated and do not happen in practice
<b>GIN</b> <b>Guinea</b> Africa Western and Central Low income	31	47	59	25
<b>HTI</b> <b>Haiti</b> Latin America & Caribbean Lower middle income	10	64	54	0
<b>HND</b> <b>Honduras</b> Latin America & Caribbean Lower middle income	44	45	71	58
<b>HUN</b> <b>Hungary</b> High income: OECD High income	16	91	68	Not regulated and do not happen in practice
<b>IND</b> <b>India</b> South Asia Lower middle income	60	67	85	Explicitly prohibited

## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>IDN</b> <b>Indonesia</b> East Asia & Pacific Lower middle income	59	67	67	58
<b>IRN</b> <b>Iran, Islamic Rep.</b> Middle East & North Africa Lower middle income	25	49	51	USP Not regulated and do not happen in practice
<b>IRQ</b> <b>Iraq</b> Middle East & North Africa Upper middle income	6	44	49	0
<b>IRL</b> <b>Ireland</b> High income: OECD High income	67	70	78	USP Not regulated and do not happen in practice
<b>ISR</b> <b>Israel</b> High income: OECD High income	46	66	38	USP Not regulated and do not happen in practice
<b>ITA</b> <b>Italy</b> High income: OECD High income	76	87	90	83



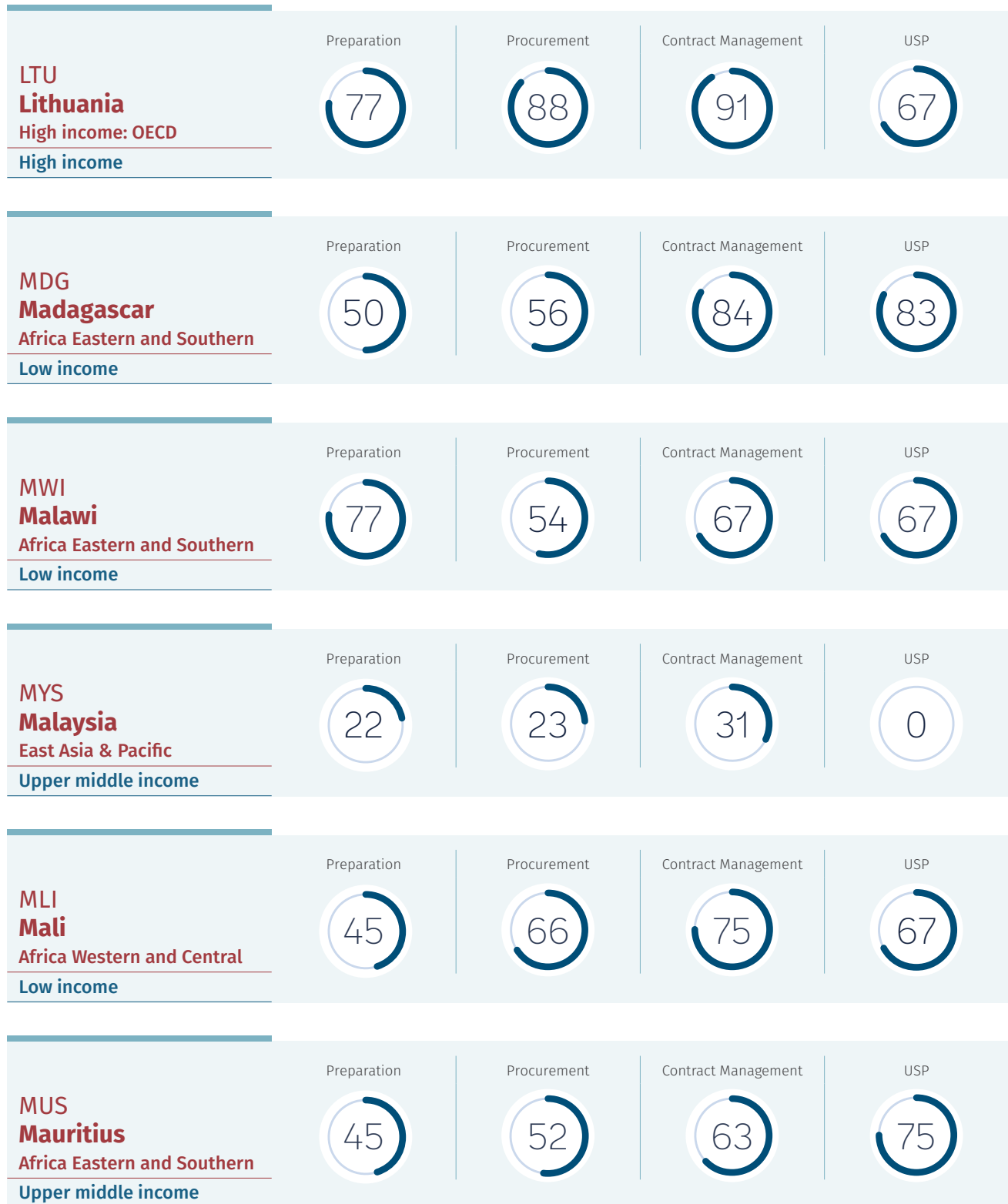
## PPP Legal Scores



## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>XKX</b> <b>Kosovo</b> Europe & Central Asia Upper middle income	54	72	64	Not regulated and do not happen in practice
<b>KWT</b> <b>Kuwait</b> Middle East & North Africa High income	67	57	76	83
<b>KGZ</b> <b>Kyrgyz Republic</b> Europe & Central Asia Lower middle income	44	51	47	50
<b>LAO</b> <b>Lao PDR</b> East Asia & Pacific Lower middle income	30	45	56	58
<b>LVA</b> <b>Latvia</b> High income: OECD High income	61	85	76	Not regulated and do not happen in practice
<b>LBN</b> <b>Lebanon</b> Middle East & North Africa Lower middle income	25	68	59	Explicitly prohibited

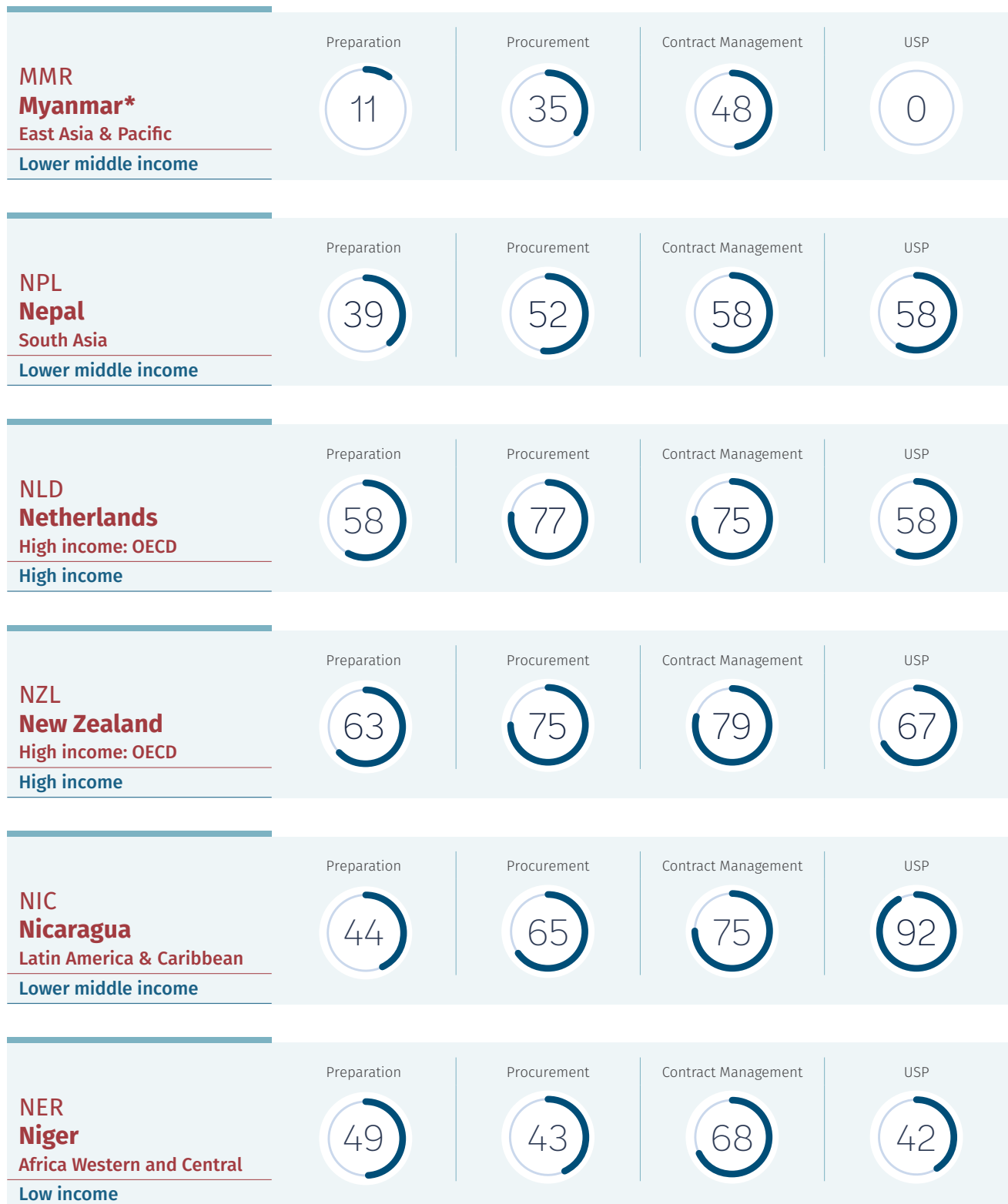
## PPP Legal Scores



## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>MEX</b> <b>Mexico</b> Latin America & Caribbean Upper middle income	71	76	86	75
<b>MDA</b> <b>Moldova</b> Europe & Central Asia Upper middle income	51	62	64	0
<b>MNG</b> <b>Mongolia</b> East Asia & Pacific Lower middle income	47	66	66	58
<b>MNE</b> <b>Montenegro</b> Europe & Central Asia Upper middle income	58	67	66	50
<b>MAR</b> <b>Morocco</b> Middle East & North Africa Lower middle income	50	60	70	67
<b>MOZ</b> <b>Mozambique</b> Africa Eastern and Southern Low income	39	57	62	33

## PPP Legal Scores



## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>NGA</b> <b>Nigeria</b> Africa Western and Central Lower middle income	30	72	61	67
<b>MKD</b> <b>North Macedonia</b> Europe & Central Asia Upper middle income	51	77	68	USP Not regulated and do not happen in practice
<b>PAK</b> <b>Pakistan</b> South Asia Lower middle income	55	72	74	58
<b>PAN</b> <b>Panama</b> Latin America & Caribbean High income	54	68	90	USP Not regulated and do not happen in practice
<b>PNG</b> <b>Papua New Guinea</b> East Asia & Pacific Lower middle income	32	31	36	33
<b>PRY</b> <b>Paraguay</b> Latin America & Caribbean Upper middle income	73	72	87	83



## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>PER</b> <b>Peru</b> Latin America & Caribbean Upper middle income	78	48	86	100
<b>PHL</b> <b>Philippines</b> East Asia & Pacific Lower middle income	79	58	95	75
<b>POL</b> <b>Poland</b> High income: OECD High income	67	85	75	Not regulated and do not happen in practice
<b>PRT</b> <b>Portugal</b> High income: OECD High income	52	84	78	Not regulated and do not happen in practice
<b>QAT</b> <b>Qatar</b> Middle East & North Africa High income	15	49	46	0
<b>ROU</b> <b>Romania</b> Europe & Central Asia High income	76	78	79	Not regulated and do not happen in practice

## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>RUS</b> <b>Russian Federation*</b> Europe & Central Asia Upper middle income	56	71	89	58
<b>RWA</b> <b>Rwanda</b> Africa Eastern and Southern Low income	54	53	55	42
<b>WSM</b> <b>Samoa</b> East Asia & Pacific Lower middle income	26	69	52	75
<b>SAU</b> <b>Saudi Arabia</b> Middle East & North Africa High income	56	91	77	92
<b>SEN</b> <b>Senegal</b> Africa Western and Central Lower middle income	45	49	78	58
<b>SRB</b> <b>Serbia</b> Europe & Central Asia Upper middle income	48	90	68	67

## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>SLE</b> <b>Sierra Leone</b> Africa Western and Central Low income	26	60	68	67
<b>SGP</b> <b>Singapore</b> East Asia & Pacific High income	29	64	68	Not regulated and do not happen in practice
<b>SVK</b> <b>Slovak Republic</b> High income: OECD High income	82	95	77	Not regulated and do not happen in practice
<b>SVN</b> <b>Slovenia</b> High income: OECD High income	41	88	51	75
<b>SLB</b> <b>Solomon Islands</b> East Asia & Pacific Lower middle income	26	57	34	Not regulated and do not happen in practice
<b>SOM</b> <b>Somalia</b> Africa Eastern and Southern Low income	42	72	65	50

## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>ZAF</b> <b>South Africa</b> Africa Eastern and Southern Upper middle income	76	62	82	67
<b>ESP</b> <b>Spain</b> High income: OECD High income	47	89	79	58
<b>LKA</b> <b>Sri Lanka</b> South Asia Lower middle income	22	54	57	92
<b>SDN</b> <b>Sudan</b> Africa Eastern and Southern Low income	17	46	57	0
<b>SWE</b> <b>Sweden</b> High income: OECD High income	19	72	38	Not regulated and do not happen in practice
<b>CHE</b> <b>Switzerland</b> High income: OECD High income	25	48	25	Not regulated and do not happen in practice

## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>TJK</b> <b>Tajikistan</b> Europe & Central Asia Lower middle income	55	59	57	83
<b>TZA</b> <b>Tanzania</b> Africa Eastern and Southern Lower middle income	43	73	59	92
<b>THA</b> <b>Thailand</b> East Asia & Pacific Upper middle income	35	38	64	Not regulated and do not happen in practice
<b>TLS</b> <b>Timor-Leste</b> East Asia & Pacific Lower middle income	20	57	50	33
<b>TGO</b> <b>Togo</b> Africa Western and Central Low income	33	45	73	50
<b>TON</b> <b>Tonga</b> East Asia & Pacific Upper middle income	25	67	21	Not regulated and do not happen in practice

## PPP Legal Scores

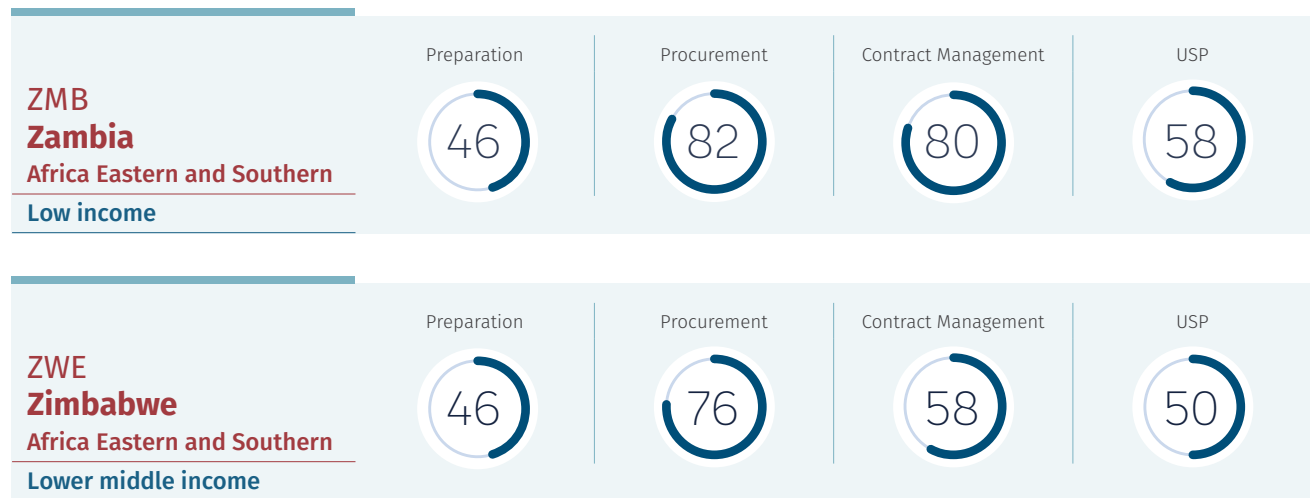
	Preparation	Procurement	Contract Management	USP
<b>TTO</b> <b>Trinidad and Tobago</b> Latin America & Caribbean High income	32	29	30	0
<b>TUN</b> <b>Tunisia</b> Middle East & North Africa Lower middle income	41	60	76	83
<b>TUR</b> <b>Türkiye</b> Europe & Central Asia Upper middle income	37	69	79	Not regulated and do not happen in practice
<b>UGA</b> <b>Uganda</b> Africa Eastern and Southern Low income	51	54	74	67
<b>UKR</b> <b>Ukraine</b> Europe & Central Asia Lower middle income	73	74	71	83
<b>ARE</b> <b>United Arab Emirates</b> Middle East & North Africa High income	61	58	59	42

## PPP Legal Scores

	Preparation	Procurement	Contract Management	USP
<b>GBR</b> <b>United Kingdom</b> High income: OECD High income	82	77	86	Not regulated and do not happen in practice
<b>USA</b> <b>United States</b> High income: OECD High income	61	63	58	100
<b>URY</b> <b>Uruguay</b> Latin America & Caribbean High income	62	71	75	67
<b>UZB</b> <b>Uzbekistan</b> Europe & Central Asia Lower middle income	24	58	63	75
<b>VUT</b> <b>Vanuatu</b> East Asia & Pacific Lower middle income	34	38	41	Not regulated and do not happen in practice
<b>VNM</b> <b>Viet Nam</b> East Asia & Pacific Lower middle income	72	80	79	67



## PPP Legal Scores



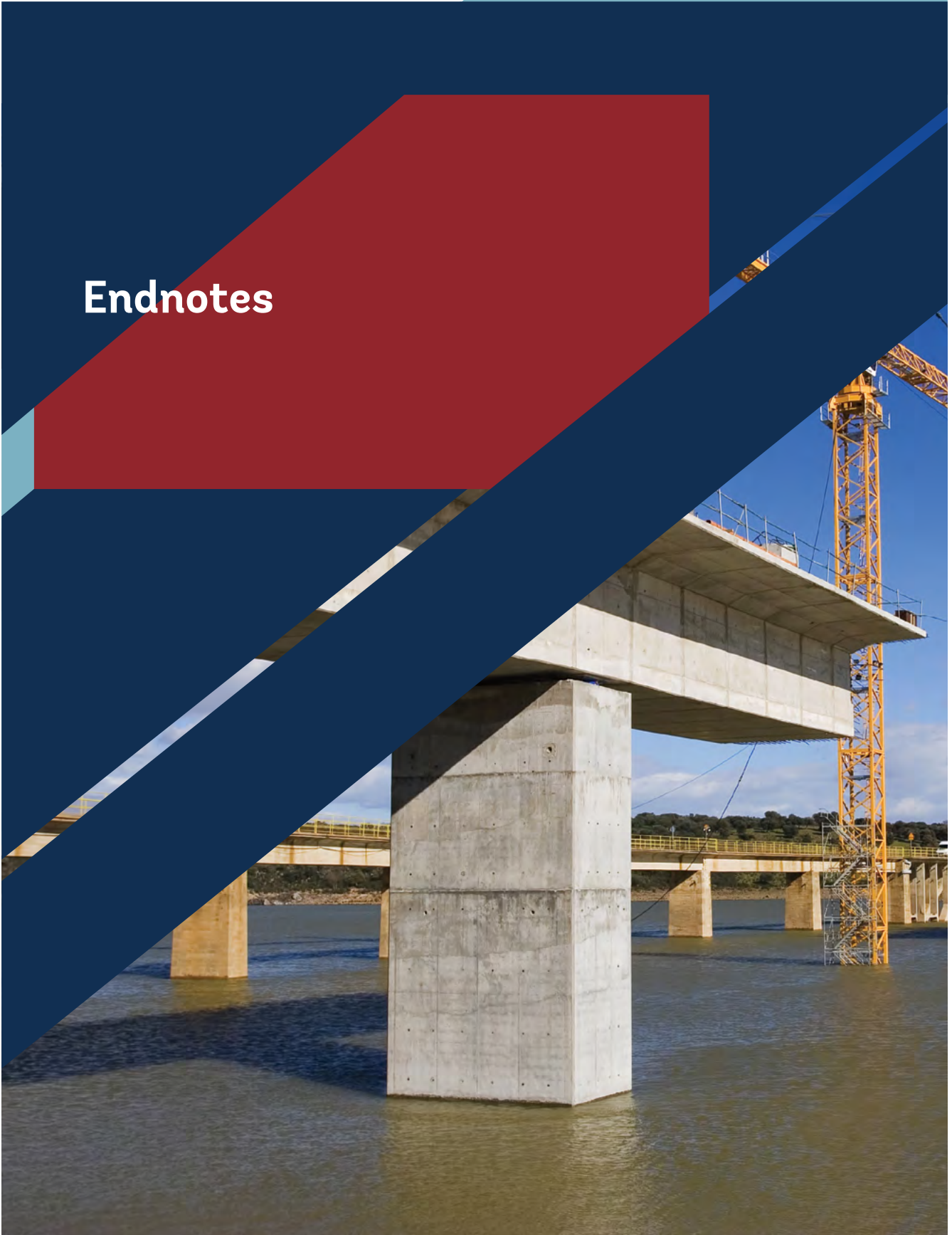
\*Disclaimer: The data for this economy was last collected in BID 2020.

# References



- Araya, G., J. Schwartz, and L. A. Andres. 2013. "The Effects of Country Risk and Conflict on Infrastructure PPPs." World Bank Policy Research Working Paper No. 6569. <https://ssrn.com/abstract=2310450>.
- Banerjee, S., J. Oetzel, and R. Ranganathan. 2006. "Private Provision of Infrastructure in Emerging Markets: Do Institutions Matter?" *Development Policy Review* 24(2): 175–202. <https://doi.org/10.1111/j.1467-7679.2006.00321.x>.
- Batoev, G., and C. Schlosser. 2013. "The advantages and disadvantages of the various procurement procedures." Student paper.
- Foster, V., and C. Briceño-Garmendia. 2010. *Africa's Infrastructure: A Time for Transformation*. Africa Development Forum, World Bank, Washington DC.
- Foster, V., and M. Ngulube. 2024. "Long-Term Trends in Private Finance for Infrastructure: Understanding the Role of DFIs." Unpublished Working Paper.
- Hammami, M., J. Ruhashyankiko, and E. Yehoue. 2006. *Determinants of public-private partnerships in infrastructure*. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=902765](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=902765).
- Herrera Dappe, M., V. Foster, A. Musacchio, T. Ter-Minassian, and B. Turkgulu. 2023. *Off the Books: Understanding and Mitigating the Fiscal Risks of Infrastructure*. Sustainable Infrastructure Series.
- Kumar, N. 2019. *Determinants of Public Private Partnerships in Infrastructure: A Study of Developing Countries*. Academia.edu. [https://www.academia.edu/download/63171139/Determinants\\_of\\_Public\\_Private\\_Partnerships\\_in\\_Infrastructure\\_-\\_A\\_Study\\_of\\_Developing\\_Countries20200502-9444-w7vuf1.pdf](https://www.academia.edu/download/63171139/Determinants_of_Public_Private_Partnerships_in_Infrastructure_-_A_Study_of_Developing_Countries20200502-9444-w7vuf1.pdf).
- Moszoro, M., G. Araya, F. Ruiz-Nuñez, and J. Schwartz. 2015. "What Drives Private Participation in Infrastructure Developing Countries?" *Public Private Partnerships for Infrastructure and Business Development*, 19–44. [https://doi.org/10.1057/9781137541482\\_2](https://doi.org/10.1057/9781137541482_2).
- Ngulube, M., F. Ruiz-Nuñez, and M. Vagliasindi. 2024. "PPP regulatory reforms and PPP investments." Background paper prepared under BID Flagship. Unpublished Working Paper.
- Rozenberg, J., and M. Fay. 2019. *Beyond the Gap: How Countries Can Afford the Infrastructure They Need While Protecting the Planet*. Washington, DC: World Bank.
- World Bank. 2017a. *Benchmarking Public-Private Partnerships Procurement 2017: Assessing Government Capability to Prepare, Procure, and Manage PPP*. Washington, DC: World Bank.
- World Bank. 2017b. PPP Reference Guide 3.0. Washington, DC: World Bank. [https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/UnsolicitedProposals\\_Volume2\\_Guidelines\\_WEB%20%281%29.pdf](https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/UnsolicitedProposals_Volume2_Guidelines_WEB%20%281%29.pdf).
- World Bank. 2020. *Benchmarking Infrastructure Development 2020*. Washington, DC: World Bank.
- World Bank. 2021. "Building Stronger Institutions to Deliver Better PPPs." Issues paper: Identifying critical factors for success and challenges of implementing a PPP program. Washington, DC.
- World Bank. 2022. *Indonesia Infrastructure Finance Development (IIFD) Multi-Donor Trust Fund Annual Report*.
- World Bank. 2024. "Project Development Funds (PDFs) - Supporting Project Preparation to Structure Successful Public-private Partnerships (PPPs):" A Primer. Washington, DC.
- Yang, J., W. Wu, X. Mao, and Z. Cai. 2019. "Quantile Analysis of Investment in Private Participation in Infrastructure Projects." *Annals of Financial Economics* 14 (1): 1950005. <https://doi.org/10.1142/S2010495219500052>.

# Endnotes





- 1** Since BID 2020, nine economies have passed regulations expressly regulating unsolicited proposals (USPs), namely Angola, Armenia, Cambodia, the Arab Republic of Egypt, Greece, the Lao People’s Democratic Republic, Qatar, Somalia, and Sudan.
- 2** For the purpose of this report, a PPP is defined as “a long-term contract between a private party and a government entity for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance” (World Bank 2017b).
- 3** A PPP regulatory framework, in the context of this report and initiative, encompasses all laws, regulations, policies, binding guidelines or instructions, standardized PPP contracts and/or bidding documents, other legal texts of general application, judicial decisions, and administrative rulings governing or setting precedent in relation to PPPs. In this context, the term “policies” refers to the other government-issued documents that are binding to all stakeholders, are enforced similarly to the laws and regulations, and provide detailed instructions for the implementation of PPP projects. The term “policies” should not be confused with the general government policy in relation to PPPs in the sense of a government’s statement of intent to use PPPs as a course of action to deliver public services. The “regulatory framework” includes, but is not limited to, the above-mentioned laws, regulations, policies, and the like that are dealing with PPPs (note that it is not uncommon to see the procurement of PPPs regulated by or incorporated into the general public procurement framework).
- 4** Acknowledgements, contributors, details about the methodology, coverage, complete database, interactive tools to explore country profiles.
- 5** The case studies of Colombia, Kenya, and the Philippines are available in the project’s website [bpp.worldbank.org](http://bpp.worldbank.org)
- 6** Total investments includes digital, energy, transport, and water sectors.
- 7** The control factors using the estimation include population; gross domestic product (GDP) per capita; GDP per capita growth; terms of trade; inflation; exchange rate volatility; government debt as a percentage of GDP; domestic interest rate; official development assistance (ODA) as a percentage of gross national income (GNI); foreign direct investment (FDI) as a percentage of GDP; and gross fixed capital formation of the public sector as a percentage of GDP. It also includes dummy variables for the 2008 financial crisis regions, landlocked and top five countries.
- 8** The correlation is statistically significant at the 5 percent level.
- 9** To provide context, the mean PPP investment in the sample was US\$2.2 billion, whereas the median was US\$429 million.
- 10** The correlation is statistically significant at the 1 percent level.
- 11** For context, the average transport PPP investment in the sample was US\$ 1.9 billion, with a median of US\$467 million.
- 12** Law No. 76-20, adopted on December 31, 2020.
- 13** Decree-Law No. 2021-21 of December 28, 2021, on the Finance Law for the year 2022.
- 14** Established by Article 13 of Decree-Law No. 2021-21 of December 28, 2021, on the Finance Law for the year 2022.
- 15** Article 8 of the Public-Private Partnership Projects Law (17) for the Year (2020) and the Public Private Partnership Projects Account Regulation No. (24) of 2021.
- 16** Project Development Facility website: <https://ppp.mef.gov.kh/project-development-facility>.
- 17** Article 12 of the Law on Public-Private Partnership NS/RKM/1121/018, adopted on November 18, 2021.
- 18** ADB (Asian Development Bank). 2017. Indonesia: Infrastructure Reform Sector Development Program (Subprograms 1, 2, and 3, and Infrastructure Project Development Facility) Completion Report.
- 19** World Bank. Forthcoming. “Primer on Project Development Funds: Building Stronger Institutions to Deliver Better PPPs.”
- 20** World Bank. 2022. Indonesia Infrastructure Finance Development (IIFD) Multi-Donor Trust Fund Annual Report.
- 21** This assessment could be undertaken either through a cost-benefit analysis (CBA), a cost-effectiveness analysis, or multicriteria analysis, as appropriate, or other relevant methodologies.
- 22** I.e., value for money analysis, public sector comparator.
- 23** Although interlinked, financial viability and market sounding refer to different aspects of the commercial viability of a project. The financial viability or bankability assessment compares the cost to operate, maintain, and replace assets with the benefit of the project using market prices, whereas market sounding evaluates the appetite for the project in the market, looking for evidence of investors’ and private operators’ interest in the project. ADB (Asian Development Bank). 2017. Indonesia: Infrastructure Reform Sector Development Program (Subprograms 1, 2, and 3, and Infrastructure Project Development Facility) Completion Report.
- 24** Article 53 of the PPP Regulations provides for the need for environmental impact assessment.
- 25** The “Guide to Public-Private Partnership Contracts (PPP) - Handbook of Good Practices” details the methodology of environmental impact assessment.
- 26** Section 15 of the PPP Regulations provides: Without prejudice to the provision of section 10 of the act, the feasibility study report shall contain— (a) details regarding salient features of the proposed project, including (o) a description of environmental and social impact assessments.
- 27** Order No. 1067, dated December 14, 2021, states that: (1) While analyzing the social consequences of PPP implementation: population groups on which the PPP project will have a direct impact must be determined; an assessment of the current state and social problems of certain population groups must be carried out before the PPP implementation; the impact of the project on defined population groups must be assessed by forecasting changes in the current state in the future with and without the PPP implementation.

- 28 Since the publication of BID 2020, the Dominican Republic, Estonia, Montenegro, Panama, Senegal, Sudan, and Togo have adopted new legislation requiring a fiscal affordability assessment as part of the preparation phase for PPP projects.
- 29 The 2022 *Fiscal Commitments and Contingent Liabilities Operational and Procedural Manual* details a specific methodology and calculation modalities. The PPP Guidelines also provide the procedure to conduct the affordability assessment.
- 30 Article 36 of the PPP Decree provides that the preliminary evaluation shall include the following: "... d) a financial feasibility study, the purpose of which is to demonstrate the financial robustness of the public-private partnership project, taking into account the expected revenues and the corresponding financial and operating costs ..."
- 31 The methodology used to analyze these aspects is provided in Attachment Chapter III, part B (7)(e) of BAPPENAS Regulation No. 4.
- 32 Deciding on the project procurement strategy and roadmap is part of preparing a PPP project, as indicated by the DoF PPP Guidelines in section 3.11., page 49 (Procurement Strategy and Roadmap). This consists of the following steps: 1) Presenting an implementation strategy for the recommended delivery option; 2) Creating a project roadmap that includes target dates for completion; 3) Outlining the key risks and challenges to the procurement timeline and suggesting mitigation strategies; and 4) Identifying whether the potential success of a PPP project is dependent on a required change to the regulation; and 5) Considering the economy value addition on a case-by-case basis.
- 33 Section 38 (2) (b) of the PPP Act, 2020 (Act 1039) requires the promotion of the PPP project to prospective bidders without limiting competition using market sounding, among others.
- 34 Regulation 36 (1) of the PPP Regulations 2020 states: 36 (1) The contracting authority or PPP advisor acting on behalf of the contracting authority may, during or following the preparation of the feasibility study, conduct market sounding to—(a) inform the contracting authority's preparation of the PPP or verification of its feasibility, fiscal affordability, or value for money; (b) secure investor interest in the proposed project; (c) secure aspects that need to be considered to improve the bankability of the project; and (d) inform potentially interested private parties, investors, lenders, and other entities of PPP procurement plans and requirements.
- 35 The New Public Procurement Law (Law 14.133/2021) states in paragraph 1 of Article 18: "§ 1 The preliminary technical study referred to in item I of the caput of this article must highlight the problem to be solved and its best solution, in order to allow the assessment of the technical and economic feasibility of the contract, and will contain the following elements: ... V - market survey, which consists of the analysis of possible alternatives, and technical and economic justification for choosing the type of solution to be contracted."
- 36 Section 17(a) of the Public Private Partnership Act, 2020 (Act 1039) requires that the controller and accountant general ensure that transactions related to PPP projects are covered in the national accounts.
- 37 Article 17 of the PPP law: Functions of the Ministry of Economy and Finance.
- 38 Section 32(1) of the PPP Act states a duty to include PPP project costs in annual budgets: "32(1) Subject to the provisions of the Public Finance Management Act, a Contracting Authority shall be under an obligation to budget for all foreseeable costs associated with the conceptualization and implementation of PPP arrangements envisaged in section 28."
- 39 Article 23 of the PPP Law states: "Powers of the Ministry of Finance. The Ministry of Finance will fulfill the following functions: ... 4) Issue a technical opinion, duly substantiated, on the public financial commitments, firm or contingent, of each of the proposed initiatives, recommending: approval, approval with adjustments, rejecting approval; which will be incorporated into the consolidated report of the National Council for Public-Private Partnerships; ... 8) Carry out and publish annually an evaluation of the firm and contingent liabilities derived from current public-private alliance contracts."
- 40 In detail, the PPP Unit is tasked with receiving periodic reports from the contracting authorities and provide its recommendations thereon to the High Committee according to Article 7(7) of the PPP Law. It shall also publish a report on each PPP project after its financial close on the unit's website and in the Official Gazette, provided that such a report includes the following: a. The name of the PPP project and the procedures followed in it, including the tendering process. b. The name and address of the entity with which the PPP project's financial close has been achieved or the beneficiaries or local agents of such an entity (if any). c. A summary of the PPP project's scope, including its subject, term, and pricing. In addition, Article 9 of the PPP Law provides that the head of the PPP unit shall "[prepare] the annual report on the PPP Unit's activities, the financial statements of the account, and other reports and submit the same to the High Committee for approval."
- 41 Section 17 (b) of the Public Private Partnership Act, 2020 (Act 1039) requires that the controller and accountant general, in reporting PPP transactions in the national accounts, apply the International Public Sector Accounting Standards relating to public-private partnership arrangements and projects.
- 42 According to the recently adopted changes to the Budget Code of Ukraine (Article 23), the Ministry of Economy maintains a register of long-term obligations within the framework of public-private partnership, and posts relevant information on its official website in accordance with the procedure determined by the Cabinet of Ministers of Ukraine.
- 43 World Bank. 2017b. *PPP Reference Guide 3.0* Module 3: PPP Cycle, Section 3.51 "Deciding the Procurement Strategy," p. 162.
- 44 World Bank. *PPP Reference Guide 3.0* Module 3: PPP Cycle, Section 3.51 "Deciding the Procurement Strategy," p. 162.
- 45 An *open tendering* is open to all interested bidders, and the most economically advantageous bid wins without holding contract negotiations. Although such a method is presumed to foster effective competition and value for money, there are arguments to the contrary in the case of PPPs because the open tendering is very procedure oriented and is primarily designed for procurement of simple or standardized goods, works, and services.
- 46 *Restricted tendering* is a competitive procurement method with a pre-qualification stage, during which the technical, legal, financial, and other capacities of potential bidders are assessed. Thus, compared to the open procedure, competition is somewhat limited in restricted tendering. However, by limiting the number of bidders for which proposals would actually be evaluated, the danger of low-quality bids is significantly decreased. Moreover, uncertainty regarding the amount of time required to evaluate each bid also diminishes (Batoev and Schlosser 2013).

- 47** A common example of a *multistage procurement* method is a two-stage tendering, which may or may not be preceded by a pre-qualification stage or include negotiations. In a two-stage tendering, the technical and financial proposals are submitted separately, one before the other, rather than simultaneously. If negotiations are envisaged as part of this procedure, bidders may also be able to assist the procuring authority in defining the technical requirements and the scope of work for a project.
- 48** A *competitive dialogue* procedure is commonly used to procure particularly large or complex projects, including implementation of major integrated transport infrastructure projects or projects involving a complex and structured financing, as well as in cases where procuring authorities are unable to define the means of satisfying their needs or of assessing what the market can offer in terms of the technical, financial or legal solutions. In a competitive dialogue procedure, pre-qualified bidders are invited to participate in a dialogue to define the means best suited to satisfying the contracting authority's needs. After a dialogue is concluded, bidders submit their final bids based on the solution(s) specified during the dialogue and the winning bid is usually determined on the basis of the best price-quality ratio.
- 49** The *best and final offer* (BAFO) process is usually seen as a tool or an option within a larger procurement process to allow bidders to amend or modify their proposals after a round of negotiations or clarification sessions with a procuring authority. The BAFO process may also be helpful when there are two or more preferred bids that are almost identical, and it is impossible to determine a winner.
- 50** World Bank. *PPP Reference Guide 3.0*, Module 3: PPP Cycle, Box 3.11, "Competitive Procurement or Direct Negotiation," p. 161.
- 51** Lender step-in rights refer to a power under the PPP contract or in the applicable legislation for the lender to take control of the project in certain situations. Step-in rights are appropriate for limited recourse financing, where the lender is limited in its recovery of the project assets.
- 52** For a discussion of the progress made by Ghana, Panama, and Saudi Arabia, with respect to contract management, see Chapter 3 highlighting case studies.
- 53** Since BID 2020, seven economies require the approval from a government authority other than the procuring authority to modify the contract, namely Armenia, the Dominican Republic, Guinea, Montenegro, Saudi Arabia, Togo, and Uzbekistan.
- 54** According to Section 2.1.1 of the PPP Guidelines IV, the formation of the PPP project team is one of the key factors for the success of the PPP project. According to Section 2.1.1 of the PPP Guidelines IV, the PPP project team is tasked with monitoring the availability and quality of services and the financial situation of the private partner.
- 55** Article 71 of the PPP Regulations (Executive Decree 1190) provides for a strategy for contract management and a contract management manual.
- 56** Jordan, Panama, Poland, Saudi Arabia, and the United Arab Emirates.
- 57** Manual for the Evaluation, Assignment, and Assessment of Risks, approved by Resolution No. ER-02-L1-2022 of March 31, 2022, provides guidelines to be followed for the mitigation of specific risk scenarios during construction, operation, and maintenance.
- 58** Article 83 of PPP Law 4635/2019.
- 59** Article 10.11 (i) of Presidential Decree No. 316/19, of October 28, 2019 (amended by Presidential Decree No. 111/21, of April 29, 2021).
- 60** Section 12.11 of the BOT Law, regarding contract variation, provides that the approving body shall set, as part of the approval of the project, a cap on the allowable variation during the entire contract, which cap shall not exceed 10 percent of the original project cost.
- 61** World Bank. 2017b.
- 62** World Bank. 2017b.
- 63** Since BID 2020, 10 economies have adopted an additional vetting procedure or pre-feasibility analysis, namely Angola, Armenia, the Dominican Republic, Ecuador, Ghana, Greece, Lao PDR, Nepal, Somalia, and Togo.
- 64** Section 55(6) of the PPP Act 2020 (Act 1039) requires a preliminary review of the unsolicited proposal in the form of an "initial business case." Section 55(16) of Act 1039 requires the procuring authority to appraise the feasibility study report of the project.
- 65** Article 26 (2) of the PPP Law provides that projects proposed by the investor shall be procured under open bidding or competitive negotiation, in accordance with Article 37 or Article 38 of the law.
- 66** Starting October 1, 2019, the government accepts for review USPs for PPP/concession only for projects for works or services related to ports, airports, and production and distribution of electric energy, heating energy, and distribution of natural gas. Article 25 (1) of the PPP Law states that "The contracting authority is authorized to review and accept USPs only for the realization of works and/or the provision of services in ports, airports, for the production and distribution of electricity, energy for heating and the distribution of natural gas, in accordance with the procedures defined in this article, provided that these proposals do not relate to a project for which selection procedures have started or have been announced."
- 67** Since BID 2020, nine economies have passed regulations expressly regulating USPs, namely Angola, Armenia, Cambodia, Egypt, Greece, Lao PDR, Qatar, Somalia, and Sudan.
- 68** Article 1 of Law 4903/2022 defines the submission of standard/model proposals (hereinafter "unsolicited proposals"). The new law introduced USPs for infrastructure projects as an alternative to the traditional method of conception and development of infrastructure projects, where the private sector takes the initiative and co-shares in the identification and development of a project, complementary to the planning of the state, in order to accelerate the maturation, tender, and implementation of infrastructure projects with the contribution of the private sector.
- 69** Article 4 of the PPP Law: "Each of the Government Agency or the Competent Department may, on its own initiative or upon the proposal of the Private Sector, select a Project for implementation through Partnership, and raise it to the Minister, for approval in principle."



- 70** Article 20 of the PPP Law provides for exceptional procuring methods that can only be resorted to following the approval of the Supreme Committee based on a request from the competent administrative authority and recommendation from the unit and which include "... 3.3. Contracting for a project that is being implemented based on an initiative from the private sector, if the project is innovative, its studies and funding are completed, and it achieves an economic and social benefit for the State that was not contemplated by the Administrative Authority at the time the project was submitted to it. ..."
- 71** World Bank. 2017b.
- 72** Article 26 (2) of the PPP Law provides that projects proposed by the investor shall be procured under open bidding or competitive negotiation in accordance with Article 37 or Article 38 of this law.
- 73** Numeral 1 of Article 12 of the Concession Regulations states: "The bidding of private initiative projects will take place as provided in Title III hereof" (referring to the general bidding process), and is no longer part of the regulation, in accordance with Decree 206 of 2022.
- 74** In the procedures for the award of public works contracts for the study and construction of a work for which an unsolicited proposal approval decision has been issued, the minimum deadlines of paragraph 1 of Article 27 (open procedure, Book I), of paragraph 3 of Article 28 (preliminary notice of competition in closed procedure, Book I), of paragraph 1 of Article 29 (competitive procedures with negotiation, Book I), of paragraph 1 of Article 264 (open procedure, Book II), of paragraph 3 of Article 265 (agreement for the receipt deadline for closed procedures, Book II) and of paragraph 1 of Article 266 (negotiation procedure with prior notice of competition) of Law 4412/2016 correspond to at least 100 days. The same deadlines apply as well when the contract for the study and construction of the work relates to the provision of maintenance and operation services and is implemented as a PPP contract according to Law 3389/2005.
- 75** Article 7-B of the PPP Regulations, as amended by Presidential Decree 111/21 of April 29, 2021: (Reimbursement for costs) "1. The tender documents for the launch of the Public-Private Partnership include a reimbursement clause for the private entity that served as the basis for the tender for the costs incurred in preparing the studies referred to in paragraph 1 of Article 7. A of the present Regulation.  
2. For the purposes of the preceding paragraph, the winner of the competition is responsible for reimbursing the costs incurred in preparing the studies."
- 76** Article 25 of the PPP Decree provides: "The reimbursement amounts shall be calculated as parts of the project investment costs and be declared in the bidding documents. In case the private party who submitted the unsolicited proposal places a bid at the higher price, the below-listed incentives will be offered: - automatic shortlisting into the final bidding round; - the maximum bonus of no greater than 5 percent of the bidding price."
- 77** Standardized documents for Tanzania can be found at [https://www.ppra.go.tz/uploads/documents/en-1675611487-PPP-Agreement\\_Final\\_August\\_2021.pdf](https://www.ppra.go.tz/uploads/documents/en-1675611487-PPP-Agreement_Final_August_2021.pdf).
- 78** Case study prepared based on BID data with input from the government of Ghana.
- 79** Some provisions regarding institutional arrangements did not enter this reform. For example, the government opted for a PPP Office under the Public Investment and Assets Division of the Ministry of Finance rather than establishing an autonomous institution to regulate PPPs. The decision was consistent with government policy to minimize expenditures related to new institutional setups and bureaucracy. Moreover, the fiscal risks associated with PPPs also informed the decision to house the PPP Office at the Ministry of Finance to ensure effective oversight of PPP projects and transactions.
- 80** Per section 33 of the PPP Act.
- 81** Per section 32(3) of the PPP Act.
- 82** Per clause 14 of the Third Schedule of the PPP Act.
- 83** These requirements are listed in the Third Schedule (section 58 (11)) of the PPP Act.
- 84** Per section 75(2) of the PPP Act.
- 85** Author's analysis based on data from BID 2023 and input from the PPP National Secretariat (Secretaría Nacional de Asociaciones Público-Privadas) of the government of Panama.
- 86** Panama has a dynamic PPP framework considered a three-tiered framework: the PPP Law, perceived as an umbrella norm, complemented and reinforced by the PPP Regulations further developing the law's requirements. These are in turn updated by resolutions adopted by the Governing Body for the PPP regime. This Governing Body was created by Article 11 of the PPP Law to approve resolutions that enhance the PPP Regulations, facilitating the process of periodically updating the regime in accordance with international good practices. To establish this framework, the PPP National Secretariat (SNAPP) worked in collaboration with international organizations—mainly the World Bank but also supported by the Central American Bank for Economic Integration (CABEI), Development Bank of Latin America (CAF) and the Inter-American Development Bank (IDB). There were also bilateral technical collaborations with the governments of the United States and the United Kingdom.
- 87** As stated in Articles 8, 9 and 28 of the PPP Law.
- 88** Article 8 of the PPP Regulations.
- 89** Article 77 of the PPP Law.
- 90** Further guidelines and standardized documents, such as contracts and tender specifications, are presently being developed to assist contracting public entities in technical, legal, and eligibility analysis, among others. It is expected that these will soon be made publicly available.
- 91** The motivation for this particular reform was based on the first experience in assisting in the structuring, bidding, and allocation of the first PPP project, "Carretera Panamericana Este."
- 92** Case study prepared based on BID data with input from the government of Saudi Arabia.

- 93** PPPs were previously addressed under the private-sector participation (PSP) strategy adopted by the resolution of the Supreme Economic Council (dissolved) No. 1/23, dated June 4, 2002, and Council of Ministers Resolution 219, dated November 11, 2002, approving the list of PSP targeted utilities, functions and services.
- 94** The most relevant regulations include, inter alia, Cabinet Resolution No. (355) of March 6, 2017, on the Regulations of the National Center for Privatization, which provides in Article 3 that the projects related to the participation of the private and public sector shall be included in the privatization, Council of Ministers Resolution No. (665) of July 31, 2017, approving the Rules of Conduct of the Supervisory Committees of Privatization Targeted Sectors, Royal Decree M/58 of 2006 Regulating Government Tenders and Procurement, reissued in 2019 and its implementing regulations.
- 95** For further information on Saudi 2030 vision objectives: <https://www.vision2030.gov.sa/v2030/vrps/privatization>.
- 96** Enacted on March 18, 2021, and entered into force 120 days after its publication on March 26, 2021.
- 97** Enacted on November 28, 2021.
- 98** Enacted on September 21, 2021.
- 99** Enacted on April 19, 2018, addressing in detail the technical, procedural, and governance aspects linked to PSP projects. The manual was prepared and approved by the National Center for Privatization Board, shortly after its establishment by the issuance of regulations of March 6, 2017. It was the first step in adopting a PPP-specific framework.
- 100** A civil code was recently adopted and entered into force on December 16, 2023. It aims to provide more clarity and legal certainty for investors. Interestingly, the civil code applies retrospectively to situations and contracts that occurred and were concluded before December 16, 2023.
- 101** Article 128 of the Implementing Regulations.
- 102** As per Article 132.3 of the Implementing Regulations.
- 103** Article 1 of the PSP Law defines a PPP as “[a] contractual arrangement related to Infrastructure or Public Service which results in a relationship between the Government and the Private Party containing the following elements: 1. The duration of the contractual arrangement shall be for a period of (5) years or more. 2. The Private Party, pursuant to the contractual arrangement, undertakes works including two or more of the following: design, construction, management, operation, maintenance or finance of the Assets, whether these Assets are government-owned, or owned by the Private Party, or both. 3. There is a qualitative and quantitative allocation of risks between the Government and the Private Party. 4. The payments owed by or to the Private Party under this contractual arrangement are primarily based on the performance of its obligations.”
- 104** As per Article 9 of the PSP Law.
- 105** The case study was prepared based on BID 2023 data with input from Taras Boichuk, Head Office, PPP Project Management Office (SPILNO), Ministry of Restoration of Ukraine.
- 106** <https://ppp-certification.com/pppguide/download>.
- 107** <https://zakon.rada.gov.ua/laws/show/2043-20#n2>.
- 108** Article 23 of Budget Code of Ukraine No. 2043-XI.
- 109** Budget Code of Ukraine No. 2043-XI.
- 110** Article 18(1) of the Concession Law.
- 111** Article 21(1) of the Concession Law.
- 112** Regulation 909.
- 113** Article 43 of the Concession Law.

